(1)

90-901

Case Number: _____

IN THE UNITED STATES SUPREME COURT

OCTOBER-JUNE, 1990 TERM

DONALD K. ALEXANDER, PETITIONER,

V.

EVANS & DIXON LAW PARTNERSHIP, ET AL, RESPONDENTS.

PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DONALD K. ALEXANDER, 16-A BROADWAY VILLAGE DRIVE, COLUMBIA, MISSOURI 65201 (314) 442-0319

PETITIONER PRO SE

QUESTIONS PRESENTED FOR REVIEW:

I. Whether individual members of the local Bar Committee or of the Missouri State Board of Law Examiners, who willingly conspire with private attorneys to discredit the reputation of, and maliciously attach the stigma of "moral unfitness" to a law student before that law student's Application For Law Student Registration is properly before said Bar Committee or said Board of Law Examiners, are entitled to quasi-judicial immunity from civil damages in connection with a cause of action brought under 42 U.S.C. Section 1983?

II. Whether it is appropriate for the District Court to deny the plaintiff in a Section 1983 civil rights suit, alleging a secret conspiracy, the right to conduct any discovery and then grant the

defendants' Motions For Summary Judgment based on the plaintiff's lack of factual evidence to withstand the motions?

III. Whether the plaintiff in a Section 1983 civil rights conspiracy suit can reasonably be expected at the initial pleading stage to allege facts with sufficient specificity to "show a meeting of the minds"?

IV. Whether, in a Section 1983 civil rights conspiracy suit, affidavits submitted by the defendants, and directly disputed in the plaintiff's opposing affidavits, which simply deny any knowledge of facts alleged by the plaintiff are sufficient to meet the burden of showing that there is no genuine dispute as to a material fact?

V. Whether the plaintiff bringing a Section 1983 civil rights conspiracy suit is legally required to seek a remedy in the state court system prior to bringing a cause of action in the federal court system under 42 U.S.C. Section 1983?

VI. Whether, under the facts and circumstances alleged in petitioner's pleadings and affidavits, a fair-minded jury could possibly return a verdict in favor of petitioner?

VII. Whether, under the facts and circumstances alleged in petitioner's pleadings and affidavits, the District Court clearly abused its discretion when it imposed FRCP Rule 11 sanctions upon petitioner?

LIST OF ALL PARTIES TO THE PROCEEDINGS IN THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT CASE NO. 90-1477WM ON APPEAL FROM THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CASE NO. 90-4020-CV-C-5

Donald K. Alexander, Petitioner,

V.

Evans & Dixon Law Partnership, Richard K. Andrews, Gerre S. Langton, David P. Macoubrie, John L. Oliver, Jr., Lori J. Levine, Loramel P. Shurtleff, Thomas M. Dunlap, Bruce Beckett, Betty K. Wilson, and Nancy Galloway, Respondents.

TABLE OF CONTENTS

TOPIC	PAGE REFERENCE
Questions Presented for Review	3-5
Table of Authorities	7-10
Official and unofficial reports	10
Grounds on which the jurisdiction of the United States Supreme Court is invoked	11-13
Constitutional provisions, statutes and regulations which the case involves	13-17
Statement of the case	17-31
Reasons relied on for the allowance of the writ	31-63
Proof of Service upon respondents	65
Addendum	66

TABLE OF AUTHORITIES

CASE PAGE REFERENCE

ADICKES V. KRESS & CO., 398 U.S. 144 (1970) 47, 50, 54

BOURJAILY V. UNITED STATES, 107 S.Ct. 2778 (1987) 51

BREWER V. BLACKWELL, 692 F.2d 387 (5th Cir. 1982) 37,43

DENNIS V. SPARKS, 449 U.S. 24 (1980) 61

EARLE V. BENOIT, 850 F.2d 836 (1st Cir. 1988) 49

EASTWAY CONSTRUCTION V. CITY OF NEW YORK 762 F.2d 243 (2nd Cir. 1985) 62

FIRST NAT'L BANK V. CITIES SERVICE, 391 U.S. 244 47

FONDA V. GRAY, 707 F.2d 435 (9th Cir. 1983) -

FORRESTER V. WHITE, 484 U.S. 219 (1988) 42

FRANTZ V. UNITED STATES POWERLIFTING FEDERATION 836 F.2d 1063 (7th Cir. 1987) 62

HAMPTON V. HANRAHAN, 600 F.2d 600 (7th Cir. 1979) 53

HARPER V. MERCKLE, 638 F.2d 849 (5th Cir. 1981) 38, 43

HICKMAN V. TAYLOR, 329 U.S. 495 46

HOOVER V. RONWIN, 466 U.S. 558 (1984) 39

KRAEMER V. GRANT COUNTY, NO. 88-3519 Slip Opinion (5th Cir. 1990) 46, 60

MONROE V. PAPE, 365 U.S. 167 58

POLLER V. COLUMBIA BROADCAST. 368 U.S. 464 (1962) 47

LOPEZ V. VANDERWATER, 620 F.2d 1229 (7th Cir. 1980) 38

SARTIN V. COMMISSIONER OF PUBLIC SAFETY OF STATE OF MINN., 535 F.2d 430 (8th Cir. 1976) -

SARTOR V. ARK. GAS CORP., 321 U.S. 620 (1944) 50

STUMP V. SPARKMAN, 435 U.S. 349 (1978) 43

UNITED STATES V. DIEBOLD,
INC., 369 U.S. 654 (1962) 52, 58

UNITED STATES V. KOENIG,
856 F.2d 843 (7th Cir. 1988) 48

WELTON V. NIX, 719 F.2d 969
(8th Cir. 1983) 58

OFFICIAL AND UNOFFICIAL REPORTS:

There are not, to petitioner's knowledge, any official or unofficial reports of the District Court's opinion or of the "affirmed per curium" opinion of the three-judge panel in the Eighth Circuit Court of Appeals

GROUNDS ON WHICH THE JURISDICTION OF THE UNITED STATES SUPREME COURT IS INVOKED:

The United States Court of Appeals for the Eighth Circuit (case number 90-1477 WM) summarily affirmed the District Court and assessed additional damages plus double costs against petitioner in an unpublished opinion filed and entered on October 11, 1990. Petitioner did not file for a rehearing due to the "per curium" affirmation and the threat of yet additional sanctions, and because the Eighth Circuit made no reference whatsoever to the points of law and legal theories relied upon by petitioner in his original brief and reply brief.

28 U.S.C. Section 1254 confers jurisdiction upon the United States

Supreme Court to review the judgment of a Circuit Court of Appeals in any civil or criminal case by granting a petition for a writ of certiorari to the circuit rendering the judgment. The Eighth Circuit has rendered a decision in conflict with the Fifth Circuit and the Seventh Circuit opinions on the same matter and has so far sanctioned a departure by the District Court from the accepted and usual course of judicial proceedings as to call for an exercise of the United States Supreme Court's power of supervision. The decision here in question rendered by the Eighth Circuit is also in direct conflict with applicable decisions handed down in several majority opinions of the United States Supreme Court. Hence, the exercise of jurisdiction by the United States Supreme Court under 28 U.S.C. Section

1254 is especially appropriate in the instant case.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS WHICH THE CASE INVOLVES:

Federal Rules of Civil Procedure

Rule 56(c) (Summary Judgment)

> "Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in

character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

Federal Rules of Civil Procedure.

Rule 11

"Signing of Pleadings, Motions, and Other Papers; Sanctions. Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is

well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee."

Constitution of the United States:

Amendment I

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably

to assemble and to petition the Government for a redress of grievances."

Amendment V

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor will any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment XIV, Section 1

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within

its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE:

Petitioner, Donald K. Alexander, appellant and plaintiff below, is a fifty year old law student at the University of Missouri-Columbia and is scheduled to complete his law degree in December, 1990. Alexander filed a civil rights conspiracy suit under 42 U.S.C. Section 1983 in the United States District Court For the Western District of Missouri (case number 90-4002-CV-C-5) alleging that respondents secretly conspired individually and with each other to violate his rights to free speech, due process of law and equal protection of the laws guaranteed under the United States Constitution.

Respondents, Gerre S. Langton, Richard K. Andrews, David P. Macoubrie, John L. Oliver, Jr., and Lori J. Levine, appellees and defendants below (hereinafter referred to as "board members"), are current or former members of the Missouri State Board of Law Examiners. Respondent, Gerre S. Langton, is also a senior partner at Evans & Dixon Law Partnership.

Respondents, Loramel P. Shurtleff, Thomas M. Dunlap, Bruce Beckett, Betty K. Wilson, and Nancy Galloway, appellees and defendants below (hereinafter referred to as "Bar Committee members"), are current or former members of the Missouri Thirteenth Judicial Circuit Bar Committee.

Respondent, Evans & Dixon, appellee and defendant below (hereinafter referred to as "Evans & Dixon"), is a Missouri Law Partnership.

Alexander alleges that four attorneys from Evans & Dixon, Laura B. Allen, Brian N. Brink, Adrian P. Sulser, and Henry D. Menghini, who served as opposing counsel in defending against Alexander's pro se lawsuit against AAIM Management Association (civil action 582665, Circuit Court of St. Louis County; civil action 892-1895 on change of venue, Circuit Court For the City of St. Louis) acted individually and in conspiracy with each other to deprive him of due process of law and equal protection of the laws by knowingly and intentionally engaging in multiple breaches of the ABA Model

Rules of Professional Conduct as a means of depriving Alexander of the equal protection of the laws afforded to pro se litigants under the Fourteenth Amendment to the United States Constitution, and further depriving Alexander of due process of law mandated under both the Fifth and Fourteenth Amendments.

Specifically, Alexander alleges that said four attorneys from Evans & Dixon backdated by twenty-seven (27) days a critical motion for a protective order filed in the Circuit Court for the City of St. Louis; that the backdated motion was supported by a false affidavit which they filed in the Circuit Court of St. Louis County, that, in further support of the false affidavit and backdated motion, they made knowing and intentional false

statements during oral arguments before said Circuit Courts; that, in further support of the false affidavit and backdated motion, they knowingly and intentionally filed false pleadings in said Circuit Courts; that, through the repeated, improper use of personal influence, they illegally influenced judges in the Circuit Court For the City of St. Louis to transfer Alexander's legal claim into the Equity Division for a juryless trial, and then to move Alexander's case forward on the equity docket while Alexander was seeking relief by means of a Writ of Mandamus.

Alexander challenged these alleged overt acts in furtherance of the conspiracy on the part of Evans & Dixon by speaking and writing in public forums at the University of Missouri Law School

campus and during interrogation by the Bar Committee members, in addition to filing written complaints in the said Circuit Courts, the Missouri Court of Appeals For the Eastern District and the Missouri Supreme Court.

Alexander further alleges that Evans & Dixon, acting through Gerre S. Langton (who personally reviewed Alexander's said Writ of Mandamus at the request of Henry D. Menghini), and with full knowledge of Alexander's status as a law student, conspired with the Bar Committee members and the other board members to silence, oppress, threaten, injure and intimidate him for the sole purpose of retribution against him for his attempts to expose the civil rights conspiracy being perpetrated upon him by Evans & Dixon.

Alexander further alleges that Evans & Dixon, acting through Gerre S. Langton, reached a meeting of the minds with the Bar Committee members and the other board members to hinder, delay, and eventually reject his Application For Law Student Registration, as overt acts solely in furtherance of the conspiracy, before said application was received, formally reviewed, processed or acted upon by either the Missouri Thirteenth Judicial Circuit Bar Committee or the Missouri State Board of Law Examiners.

During the process of answering detailed questions on said application and during his interrogation by the committee members, Alexander disclosed information about his private, personal life over the prior thirty-six (36) years. Alexander stated that he divorced his first wife in

1964 when he caught her having sex with another man, and that the man attacked Alexander such that a fight erupted. Alexander was arrested and charged with assault and the charge was thereafter dropped. Alexander further stated that in 1982, he was forced into bankruptcy when his sub-chapter S corporation became insolvent due to the refusal of a customer to pay for a 12,800 square foot warehouse which Alexander was erecting for the customer on Alexander's credit. Twelve (12) years earlier, Alexander had also filed personal bankruptcy upon the dissolution of his second marriage caused by his second wife deserting Alexander and their three-year old son in order to live with another man. Alexander agreed to give his second wife all their marital assets in exchange for sole custody of

their son. Alexander left the marriage with zero assets.

Alexander further stated that he married again in 1971 but his new wife could not deal with his small son and became hooked on prescription drugs such that this marriage also dissolved; that while this marriage was breaking up, he became involved in a dispute with Laclede Gas Company over unmetered gas charges which he claimed were arbitrary and unreasonable. While Alexander was out of town, Laclede Gas locked out Alexander's meter. Alexander returned home on the week-end and cut the lock off his meter in order to have gas service over the week-end. The dispute escalated and Laclede Gas charged Alexander with "tampering with a utility meter." Alexander was thereafter

arrested but the charge was dismissed as unfounded. In addition, Alexander was charged with the theft of his own construction materials during the dispute over the unpaid construction invoices wherein Alexander closed down the construction job site and removed construction materials paid for by Alexander. This criminal charge was dropped following a review of the relevant facts.

Alexander further stated that he had been involved in several pro se civil lawsuits because the amount of value in controversy did not justify the usual legal fees demanded by attorneys.

In response to application questions requiring specific details concerning any and all prior traffic violations, Alexander

stated that he had received several minor traffic tickets over the previous thirty-four (34) years, but the specific details of time, place, amount of fine, court dates, etc. had long since been forgotten. Records concerning traffic violations in Missouri are purged every five years such that Alexander had no way of tracing the history of such minor traffic violations.

Then, in response to application questions requiring a complete history of all prior employments, Alexander disclosed every job which he held during the previous thirty-four (34) years including moonlighting jobs, summer jobs, and part-time jobs during high school and college years.

Alexander alleges that the committee members and the board members ignored the substance of Alexander's application answers and paraphrased Alexander's responses in the worst possible language in order to come up with some reason to reject Alexander's application in accordance with the prior meeting of the minds between the alleged co-conspirators before Alexander's application was actually received, reviewed or formally processed.

Following the actual processing and eventual rejection of Alexander's said application, he filed suit in the District Court for civil damages under the authority of 42 U.S.C. Section 1983.

Immediately after filing suit in the District Court, Alexander sought

evidence through timely discovery in the form of interrogatories, request for production of documents, request for admissions, and numerous scheduled depositions. The respondents filed affidavits simply denying any knowledge of the conspiracy alleged by Alexander, along with motions to stay discovery, motions to dismiss, motions for summary judgment, and motions for sanctions under FRCP Rule 11. Alexander filed rebuttal affidavits and opposing suggestions to all of respondents' motions. In addition, Alexander filed his Amended Petition in affidavit form to rebut statements of denial by the various respondents. The District Court denied Alexander's timely motion to further amend his petition.

The District Court stayed all of Alexander's attempted discovery and summarily dismissed Alexander's complaint. The District Court stated that its decision was based on: (1) lack of factual evidence to defeat respondents' motions for summary judgment, (2) lack of specific factual allegations to show a meeting of the minds, (3) failure to exhaust available state remedies, and (4) quasi-judicial immunity with respect to the bar committee members and the board members. In addition, the District Court imposed Rule 11 sanctions upon Alexander in the amount of $8,200.00.

Alexander filed a timely appeal to the Eighth Circuit which the Eighth Circuit summarily rejected in a "per curium" affirmation of the District

Court's opinion without any reference to the points of law raised in Alexander's briefs. The Eighth Circuit imposed additional damages plus double costs upon Alexander.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT:

The most compelling reasons for granting Alexander's petition are grounded in rights guaranteed under the First, Fifth and Fourteenth Amendments to the United States Constitution. The First Amendment protects Alexander's right to publicly speak out against perceived malfeasance on the part of individuals clothed with the public trust without fear of illegal retribution perpetuated by lawyers, judges, and administrative officials. Alexander's

complaint alleges that he did so speak out and that as a direct result of this exercise of constitutional rights he suffered illegal retribution and substantial pecuniary damages by means of an illegal civil conspiracy involving lawyers, judges, and administrative officials.

It is patently clear that Alexander filed a "colorable claim" in his amended petition filed in the United States District Court for the Western District of Missouri and is therefore entitled under "due process" to a fair and impartial jury trial.

Alexander, in his amended complaint, presents over twenty (20) pages of chronological narrative in order to show the underlying motive for the

alleged conspiracy, the names of each conspirator, the objective of the conspiracy, the undeniable nexus between the named conspirators, the opportunity presented for the conspirators to achieve their illegal objective, the means by which the illegal objective was communicated to other willing conspirators, the achievement of the illegal objective, and the resulting permanent deprivation of Alexander's constitutional rights along with irreversible pecuniary damages. Alexander further points out how the conspiracy was carried out under color of law in the absence of the shield of judicial immunity.

Under the "equal protection clause" of the Fourteenth Amendment, Alexander is entitled to have the same

constitutional, statutory, administrative, and case law applied to him as has been applied to others "similarly situated," including procedural law governing pre-trial motions and judgments on the pleadings. Discrimination against Alexander because he is bringing a very unpopular lawsuit against politically powerful opponents, and because he is appearing pro se is also prohibited under the Fourteenth Amendment. It is repugnant to the United States Constitution as well as to the average citizen's common sense expectation of equal justice and fair play that the District Court should be allowed to summarily dismiss Alexander's claim by a decision on disputed facts which fall within the province of the jury in

connection with the District Court's rulings on procedural issues raised in pre-trial motions.

All of the grounds (previously cited) stated by the District Court as the basis for dismissing Alexander's claim directly conflict with numerous majority opinions handed down by the United States Supreme Court. In addition, the legal reasoning, conclusions of law, and supporting dictum is in conflict with decisions rendered in the Fifth and Seventh Circuits. Moreover, the imposition of Rule 11 sanctions by the District Court, and again by the Eighth Circuit, to discourage further appeal by Alexander, is highly inappropriate under the relevant facts

and circumstances as alleged by Alexander.

Decisions among the circuits have not been in agreement concerning the scope of judicial immunity, and under what circumstances an alleged tortious act is entitled to immunity. The diverse opinions become more ambiguous when the challenged act or acts are attributed to persons claiming absolute quasi-judicial immunity by virtue of court delegated authority, duties and responsibilities.

The Fifth Circuit has adopted a four-part test to determine whether a particular act is judicial and entitled to immunity. Brewer v. Blackwell, 692 F.2d, 387, 396-97 (5th Cir. 1982) states,

> "We inquire in determining the judicial nature of an act whether (1) the act complained of is a normal judicial function, (2) the events occurred in the judge's court or chambers, (3) the controversy centered around a case then pending before the judge, and (4) the confrontation arose directly and immediately out of a visit to the judge in his official capacity."

The Seventh Circuit is less inclined to grant immunity to challenged acts committed in close relationship to a biased decision. In Lopez v. Vanderwater, 620 F.2d 1229, 1235-37 (7th Cir. 1980), the circuit held that a judge's private prior agreement to decide in favor of one party is not a judicial act. In Harper v. Merckle, 638 F.2d 848, 859 (5th Cir. 1981), the court said,

> "Succinctly, we hold only that when it is beyond reasonable dispute that a judge has acted out of personal motivation and has used his judicial office as an offensive weapon to vindicate personal objectives, and it

> further appears certain that no party has invoked the judicial machinery for any purpose at all, then the judge's actions do not amount to judicial acts. These nonjudicial acts, to state the obvious, are not cloaked with judicial immunity from suit under Section 1983."

The Ninth Circuit, prior to 1986, was even less tolerant than the Seventh Circuit, but overruled **Ronkin v. Howard** 633 F.2d 844 (9th Cir. 1980) in 793 F.2d 1078 (1986) and now the circuit extends very broad judicial immunity. However, the Seventh Circuit's guidelines are most similar to decisions handed down by the United States Supreme Court. In **Hoover v. Ronwin**, 466 U.S. 558, 559 (1984), in a four to three decision, the court held the challenged action to be the action of the state and hence shielded by immunity. But, at p. 569, the majority opinion stated,

"...the first critical step in our analysis must be to determine whether the conduct challenged is that of the court."

In the strong dissenting opinion at p. 587, Justice Stevens said,

"...respondent does not challenge any state policy. He contests neither the decision to license those who wish to practice law, nor the decision to require a certain level of competence, as measured in a bar examination, as a pre-condition to licensing. Instead, he challenges an alleged decision to exclude even competent attorneys from practice in Arizona in order to protect the interest of the Arizona Bar."

Justice Stevens further stated at p. 591-92,

"Here, no decision of the sovereign, the Arizona Supreme Court, is attacked; only a conspiracy of petitioners which was neither compelled nor directed by the sovereign is at stake."

Then at p. 593, Justice Stevens said,

> "Thus, if the Supreme Court did not itself deny Ronwin's application, if the denial of Ronwin's petition for review is irrelevant, and the only criterion it ever required petitioners to employ was competence, it is difficult to see why petitioners should have immunity from the requirements of federal law if, as alleged, they took the initiative in employing a criterion other than competence."

Justice Stevens' strong dissent indicates that alleged quasi-judicial acts, even when such acts are directly and immediately performed in connection with matters timely and properly before the persons carrying out the quasi-judicial function, may be considered as acts not required by the delegating court and therefore not shielded by immunity.

Furthermore, in **Forrester v. White**, 484 U.S. 219 (1988), the majority opinion stated,

> "Here, as in other contexts, immunity is justified and defined by the function it protects and serves, not by the person to whom it attaches." p. 227.

Then, at p. 228, the majority opinion states,

> "Administrative decisions, even though they may be essential to the very functioning of the courts, have not similarly been regarded as judicial acts."

Finally, at p. 230, the majority opinion left no remaining doubt that judicial immunity is to be applied narrowly and with great caution,

> "Absolute immunity is strong medicine, justified only when the

danger of officials being deflected from the effective performance of their duties is very great...To conclude that, because a judge acts within the scope of his authority, such employment decisions are brought within the court's jurisdiction, or converted into judicial acts, would lift form above substance."

The four-part test laid down in Brewer v. Blackwell, supra, is essentially determination of facts rather than questions of law. In Stump v. Sparkman, 435 U.S. 349 (1978), the court held,

"The factors determining whether an act by a judge is judicial relate to the nature of the act itself (whether it is a function normally performed by a judge) and the expectations of the parties (whether they dealt with the judge in his official capacity."

The holding in Harper v. Merckle,

supra, at p. 589 also requires fact finding rather than deciding questions of law.

Alexander alleges that because the bar committee members and the board members were conspiring with Evans & Dixon before his Application For Law Student Registration was formally being processed or acted upon by either the bar committee members or the board members, said individual members were not acting within judicially delegated authority, duties or responsibilities. This allegation is most certainly a question of fact and not a question of law, and is also a material and hotly disputed fact which a jury could reasonably decide in favor of Alexander.

Moreover, the "timing" question is a critical element and genuine issue of material fact relative to the defense of quasi-judicial immunity which respondents must plead and prove such that a fair-minded jury, upon due consideration of witness veracity and credibility, could resolve in favor of Alexander.

Alexander had filed discovery requests and scheduled numerous depositions at the earliest possible time in order to gain access to any possible evidence which the conspirators might have inadvertently overlooked. When the District Court ordered a stay against Alexander's discovery attempts, this order effectively erased any remaining chance that Alexander had to seek out incriminating evidence since all of Alexander's discovery was directed to

practicing attorneys and sitting judges. Such a stay by Judge Wright was highly inappropriate and extremely prejudicial to Alexander's cause of action.

In Hickman v. Taylor, 329 U.S. 495, 501, the United States Supreme Court held that the purpose of pleading is general notice-giving while the purpose of discovery is to:

> "narrow and clarify the basic issues between the parties and to ascertain the facts, or information as to the existence or whereabouts of the facts, relative to those issues."

In Kraemer v. Grant County, No. 88-3519, Slip Opinion, (7th Cir. 1990), the circuit states,

> "It may on occasion take the power of the federal courts to keep state

officials from harassing unpopular and powerless citizens."

In Adickes v. Kress & Co., 398 U.S. 144 (1970), Justice Black, concurring in the opinion at p. 175 said,

> "Summary judgments may be granted only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact..."

In First National Bank v. Cities Service, 391 U.S. 244, 293 (1968), the majority opinion stated that in the ordinary conspiracy case the plaintiff would be entitled to obtain discovery against all the alleged conspirators. Additionally, in Poller v. Columbia

Broadcasting, 368 U.S. 464, 473-74 (1962), the majority opinion held that summary judgment should be used sparingly where motive and intent play leading roles and proof of the conspiracy is largely controlled by the alleged conspirators; that credibility and weight can only be evaluated when witnesses are present and subject to cross examination; that when the sole answer is that there is not sufficient evidence to support plaintiff's allegations, the issue remains a question of fact; that trial by affidavit is no substitute for trial by jury; and that discovery is a factor to be considered in deciding a summary judgment motion.

In United States v. Koenig, 856 F.2d 843, 854 (7th Cir. 1988), the court stated,

"Because conspiracies are carried out in secret, direct proof of agreement is rare."

The First Circuit also recognizes the secret nature of conspiracies and the resulting scarcity of incriminating evidence.- InEarle v. Benoit, 850 F.2d 836, 843 (1st Cir. 1988), the First Circuit said,

"To be sure, the agreement that rests at the heart of a conspiracy is seldom susceptible of direct proof; more often than not such an agreement must be inferred from all the circumstances."

Thus, to stay Alexander's early discovery attempts and force him to appeal his right to such discovery by appealing the granting of summary judgment against him is to ensure that Alexander will be unsuccessful if eventually granted access to discovery.

In Sartor v. Arkansas Gas Corp., 321 U.S. 620, 627 (1944), the court said,

> "Rule 56 authorizes summary judgment only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, that no genuine issue remains for trial, and that the purpose of the rule is not to cut litigants off from their right to trial by jury..."

Also, in Adickes v. Kress, supra, the majority opinion held that the moving party must foreclose reasonable possibilities in order to meet the burden of showing the absence of a genuine issue with respect to summary judgment. Also at p. 159-60, the majority opinion stated,

> "Respondent notes in this regard that none of the materials upon which petitioner relied met the requirements of Rule 56(e).

> This argument does not withstand scrutiny, however, for both the commentary on and the background of the 1963 amendment conclusively show that it was not intended to modify the burden of the moving party under Rule 56(c) to show initially the absence of a genuine issue concerning any material fact. The advisory committee notes on the amendment states that the changes were not designed to affect the ordinary standards applicable to summary judgment...the committee stated that where the evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is presented."

Viewed in light of these opinions, it is clear that Evans & Dixon, the Bar Committee members and the board members failed to carry the burden of the moving party under Rule 56(c).

In Bourjaily v. United States, 107 S.CT. 2778, 2781 (1987), the majority opinion stated,

"...individual pieces of evidence, insufficient in themselves to prove a point, may in accumulation prove it."

Earlier in United States v. Diebold, Inc., 369 U.S. 654-55 (1962), the court held,

"On summary judgment the inferences to be drawn from the underlying facts contained in such materials must be viewed in the light most favorable to the party opposing the motion...A study of the record in this light leads us to believe that inferences contrary to those drawn by the trial court might be permissible."

Alexander, in his Amended Complaint, alleges all the elements necessary to bring a cause of action under 42 U.S.C. Section 1983 and alleges compelling circumstantial evidence in support of factual allegations. The District Court drew inferences from such circumstantial evidence in favor of the

moving parties when deciding the motions for summary judgments.

In Hampton v. Hanrahan, 600 F.2d 600, 620-21 (7th Cir. 1979), the Seventh Circuit quoting from Rotermund v. United States Corp., 474 F.2d 1139 (8th Cir. 1973) laid down the elements of a civil conspiracy:

> "A civil conspiracy is a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties to inflict a wrong or injury upon another, and an overt act that results in damages."

The circuit further stated at p. 621,

> "In order to prove the existence of a civil conspiracy, a plaintiff is not required to provide direct evidence of the agreement between the conspirators; circumstantial

evidence may provide adequate proof of conspiracy Hoffman-Laroche, Inc. v. Greenberg, 447 F.2d 872, 875 (7th Cir. 1971). Absent the testimony of a co-conspirator, it is unlikely that direct evidence of a conspiratorial agreement will exist. Thus, the question whether an agreement exists should not be taken from the jury in a civil conspiracy case so long as there is a possibility that the jury can infer from the circumstances that the alleged conspirators had a meeting of the minds and thus reached an understanding to achieve the conspiracy's objective. Adickes v. Kress & Co., 398 U.S. 144, 158-59. A plaintiff seeking redress need not prove that each participant in a conspiracy knew the exact limits of the illegal plan or the identity of all the participants therein Hoffman-LaRoche, supra, 447 F.2d at 875. An express agreement among the conspirators is not a necessary element of a civil conspiracy...when the plaintiff alleges a conspiracy to violate civil rights, the existence or non-existence of a conspiracy is essentially a factual issue that the jury, not the trial judge, should decide Adickes, supra, 398 U.S. at 176."

Respondent Richard K. Andrews' letter to Alexander dated December 27, 1989 (attached to original Complaint filed 1/3/90), is an angry and abusive letter

on its face. Yet, Mr. Andrews' affidavit alleges that he had no knowledge or prior information whatsoever concerning Alexander at the time he reviewed Alexander's Application For Law Student Registration and acted upon it in his capacity as Secretary for the Missouri State Board of Law Examiners (Affidavit of Richard K. Andrews filed 2/15/90, p. 3-8). According to this sworn statement, Andrews had no information concerning Alexander other than that contained in Alexander's said application. Thus, under oath, Andrews claims that the decision by the board members to reject Alexander was based solely on the information contained in the application (attached to Andrews' affidavit filed 2/15/90). Yet, Andrews and the other board members admit their unjustified and predetermined bias against

Alexander and their overt actions in furtherance of the conspiracy pushed by Evans & Dixon. As alleged reasons for depriving Alexander of the right to sit for the Missouri Bar Examination, the board members state,

> "...it is entirely proper for the Board to consider such matters as the plaintiff's excessive and frivolous personal litigation, irresponsibility in business and fiscal matters, abuse of the bankruptcy process, lack of discretion, lack of self-restraint, lack of judgment, lack of objectivity, hypersensitivity, unwarranted suspicions, disrespect for the judicial process and the judicial system, inability to accept authority, tendencies to blame others and to ascribe evil motives to them, use of intemperate and provocative language and epithets, lack of civility, tendency to vilify others who have opposed him, delusions of self-importance, and more specifically, the plaintiff twice taking bankruptcy rather than attempting to pay his debts incurred by reason of his first divorce and an adverse $23,000 judgment, the plaintiff's pursuit of unwarranted litigation in which plaintiff has appeared pro se and

> has blamed the outcome on what he perceives to be the deceit of opposing lawyers and the corruption and complicity of judges, and the plaintiff's intemperately manifested disrespect for the lawyers who opposed him and the courts in which he appeared." (Suggestions in Support of Motion For Summary Judgment, etc., filed 2/15/90, p. 11-12).

It would be totally impossible for a reasonable and fair-minded person to draw such inferences from the contents of Alexander's Application For Law Student Registration which Mr. Andrews swears under oath is the sole source of such inferences.

However, a reasonable and fair-minded jury could certainly infer from such a vicious attack upon Alexander that such anger and hostility pre-existed before Alexander's said application was ever received by the bar committee members or the board

members, and that such pre-existing anger and hostility resulted from a meeting of the minds with Evans & Dixon to heap retribution upon Alexander for attempting to expose the professional misconduct and illegal acts on the part of Evans & Dixon.

In Welton v. Nix, 719 F.2d 969 (8th Cir. 1983), the court reversed a summary judgment in favor of the United States stating,

> "In making this judgment the court made a choice of inferences to be drawn from the facts presented by both parties, a choice which is impermissible on a motion for summary judgment. Westborough Mall, Inc. v. City of Cape Girardeau, 693 F.2d 733, 742 (8th Cir. 1982); United States v. Diebold, 369 U.S. 654 (1962). In Diebold, the Supreme Court held that a case is not suitable for summary judgment where there are undisputed facts from which different ultimate inferences might reasonably be drawn and as to

members, and that such pre-existing anger and hostility resulted from a meeting of the minds with Evans & Dixon to heap retribution upon Alexander for attempting to expose the professional misconduct and illegal acts on the part of Evans & Dixon.

In Walton v. NTA, 712 F.2d 858 (4th Cir. 1983), the court reversed a summary judgment in favor of the United States stating:

"In granting this judgment the court made a choice of inferences to be drawn from the facts presented by both parties, a choice which is impermissible on a motion for summary judgment. Westborough Mall, Inc. v. City of Cape Girardeau, 693 F.2d 733, 743 (8th Cir. 1982). United States v. Diebold, 369 U.S. 654 (1962). In Diebold the Supreme Court held that a case is not suitable for summary judgment where there are undisputed facts from which different ultimate inferences might reasonably be drawn. [illegible]

which reasonable persons might differ. 369 U.S. at 655, 82 S.Ct. at 994."

Alexander also stands on Monroe v. Pape, 365 U.S. 167 wherein the majority opinion states,

> "It is no answer that the state has a law which, if enforced, would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked."

Alexander points out this unyielding law and the additional fact that Alexander is not seeking a reversal of the board members' denial of his right to sit for the Missouri Bar Examination or his right to practice law since his damages are irreversible and the State of Missouri cannot provide a remedy for his pecuniary damages. Alexander stated in his Amended Petition that he is only

which reasonable persons might differ. 368 U.S at 655, 82 S.Ct. at 224."

Alexander also stands on Monroe v. Pape, 365 U.S. 167 wherein the majority opinion states;

"It is no answer that the state has a law which, if enforced, would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked."

Alexander points out this controlling law and the additional fact that Alexander is not seeking a reversal of the board members' denial of his right to sit for the Missouri Bar Examination or his right to practice law since his damages are irreversible and the State of Missouri cannot provide a remedy for his particulary damages. Alexander stated in his amended Petition that he is only

pursuing the "board hearing" in order to protect his "procedural record."

It was also inappropriate for the District Court to state that Alexander was legally bound to seek state administrative remedies prior to bringing a cause of action under 42 U.S.C. Section 1983.

Alexander has been severely prejudiced by the District Court's Order staying all of his discovery attempts to gather evidence of the alleged conspiracy through timely depositions and production of documents. After staying all of Alexander's attempts at discovery, the District Court dismissed Alexander's cause of action for lack of factual evidence to support his factual allegations. The District Court further

oppressed Alexander by imposing Rule 11 sanctions.

The case on point with Alexander's cause of action is Kraemer v. Grant County, supra. Lawton, attorney for Kraemer, was sanctioned under Rule 11 for filing what the District Court deemed to be a frivolous lawsuit. On appeal, the Seventh Circuit stated,

> "In this case, our focus is on the reasonableness of Lawton's pre-filing research into the facts of the case. Although the District Court referred to Lawton's failure to establish a basis for the complaint in fact and in law, the legal problems drop out if his version of the facts was correct. If Sheriff Hottenstein was in fact conspiring with the Bakers to deprive Kraemer of her property, then there would be a remedy under 42 U.S.C. Section 1983 for violation of Kraemer's civil rights. See Dennis v. Sparks, 449 U.S. 24, 27-28 (1980). Absent the Sheriff's involvement, of course, there is no state action and no legal basis for a federal claim. But Kraemer's case

oppressed Alexander by imposing Rule 11 sanctions.

The case on point with Alexander's cause of action is Kreuzer v. Grant County, supra. Lewis, attorney for Kreuzer, was sanctioned under Rule 11 for filing what the District Court deemed to be a frivolous lawsuit. On appeal, the Seventh Circuit stated,

> "In this case, our focus is on the reasonableness of Lewis's pre-filing research into the facts of the case. Although the District Court referred to Lewis's failure to establish a basis for the complaint in fact and in law, the legal problems drop out if his version of the facts was correct. If Sheriff Hettenstein was in fact conspiring with the Bickers to deprive Kreuzer of his property, then there would be a remedy under 42 U.S.C. Section 1983 for violation of Kreuzer's civil rights. See Dennis v. Sparks, 449 U.S. 24, 27-28 (1980). Absent the Sheriff's involvement, of course, there is no state action and no legal basis for a federal claim. Did Kreuzer's case

ultimately failed because she could not establish the necessary facts, not because the law did not provide a federal remedy for the wrongs she alleged in her complaint."

The court further stated,

"We cannot require an attorney to procure a confession of participation in a conspiracy from one of the prospective defendants before filing suit--if there were such a confession, no lawsuit would be necessary...Lawton had only two options; he could advise his client to give up, or he could file a complaint on her behalf and try to develop the necessary facts through discovery...No one else could be expected to have knowledge of the conspiracy. Until some other source of information became available, then, Lawton had to rely on his client for the factual foundation for the claim. There was simply no other source to which he could turn. Once Lawton was armed with the coercive power of the federal courts to enforce the rules of discovery, he was able to get telephone records showing frequent and lengthy conversations between the sheriff and the Bakers between May and June, 1986...If discovery is necessary to establish a claim, then it is not unreasonable to file a complaint so as to obtain the right to conduct that discovery."

In Frantz v. United States Powerlifting Federation, 836 F.2d 1063, 1068 (7th Cir. 1987), the court held,

> "Rule 11 must not bar the courthouse door to people who have some support for a complaint but need discovery to prove their case."

In Eastway Construction Corp. v. City of New York, 762 F.2d 243, 254 (2nd Cir. 1985), the Second Circuit held that Rule 11 is violated only when it is,

> "patently clear that a claim has absolutely no chance of success."

Therefore is was inappropriate for the District Court to impose Rule 11 sanctions against Alexander under the facts and circumstances alleged in Alexander's pleadings.

62

In conclusion, Alexander's cause of action is legally sound and far from frivolous. Alexander's chances of obtaining incriminating evidence of the alleged conspiracy by early discovery have been eliminated by the District Court's Order staying all of Alexander's discovery attempts. However, Evans & Dixon, the Bar Committee members and the board members have clearly failed to carry the burden imposed upon the moving party with respect to summary judgment. There are both disputed and undisputed facts for the jury to consider in this cause of action as pointed out in the foregoing argument. When all of the disputed facts are deemed resolved in favor of Alexander for the purpose of a judgment on the pleadings, Alexander is legally entitled to proceed to trial.

Imposing Rule 11 sanctions against Alexander was legally unreasonable.

Donald K. Alexander

Donald K. Alexander
Petitioner Pro Se
16-A Bdwy Village
Columbia, MO 65201
(314) 442-0319

PROOF OF SERVICE:

Comes now petitioner, Donald K. Alexander, and affirms under oath before the undersigned notary public that he did on the 6th day of November, 1990, serve three copies of the foregoing Petition for Writ of Certiorari upon the attorney of record for each respondent by placing said copies in the U.S. mail with first class postage fully prepaid and said copies addressed to:

P. Pierce Dominique
623 E. McCarty St.
Jefferson City, MO 65101

Stephen C. Scott
1001 E. Walnut St.
Columbia, MO 65201

Bruce Farmer
P.O. Box 899
Jefferson City, MO 65102

STATE OF MISSOURI)
) SS.
COUNTY OF BOONE)

SUBSCRIBED AND SWORN TO before me on this 6th day of November, 1990.

Cynthia D. Combs
Notary Public

My Commission Expires: Septemer 24, 1994.

65

PROOF OF SERVICE

Comes now petitioner, Donald S. Alexander, and affirms under oath before the undersigned notary public that he did on the 6th day of November, 1990, serve three copies of the foregoing Petition for Writ of Certiorari upon the attorney of record for each respondent by placing said copies in the U.S. mail with first class postage fully prepaid and said parcel addressed to:

[illegible]
[illegible]
Jefferson City, MO 65101

Stephen C. Smith
1001 E. Walnut St.
Columbia, MO 65201

Bruce Farmer
P.O. Box 899
Jefferson City, MO 65102

STATE OF MISSOURI)
) SS
COUNTY OF BOONE)

SUBSCRIBED AND SWORN TO before me on this ___ day of ___, 1990.

Notary Public

My Commission Expires: September 24, [illegible]

ADDENDUM

Letter from Richard K. Andrews to Donald K. Alexander, dated December 27, 1989.

Relevant orders issued by the United States District Court for the Western District of Missouri.

Per curium opinion rendered by the United States Court of Appeals for the Eighth Circuit.

STATE BOARD OF LAW EXAMINERS
STATE OF MISSOURI

(Letterhead)

December 27, 1989

Mr. Donald K. Alexander
16-A Broadway Village Drive
Columbia, MO 65201

Re: Donald K. Alexander; Law Student Registration NO. 38933

Dear Mr. Alexander:

Please be advised that the Board of Law Examiners has denied your Application for Law Student Registration because, in the opinion of the Board, you have failed to demonstrate that you possess the fitness and reliability required of applicants for registration as law students.

Although the Board's denial of your Application for Law Student Registration will not automatically preclude the Board from approving your application for admission to the Bar should you subsequently graduate from law school and make application for admission to the Bar, please be advised that the members of the Board would not be favorably disposed to recommending approval of your application for admission to the Bar.

The matters contained in your Application for Law Student Registration reflect overwhelming evidence of your instability and inability to manage your personal affairs, including: three criminal prosecutions for assault, theft and tampering with a utility meter (all of which were dismissed); traffic violations so numerous that you did not list them; ten civil actions, in most of which you were the plaintiff and three of which are still pending; an unpaid judgment in excess of $23,000 which you discharged by taking bankruptcy; two personal bankruptcies in 1970 and 1982; three divorces; and more than 25 different employments. One who has exhibited such a high degree of personal instability and inability to manage one's own affairs is ill-suited to counsel and represent others in the handling of their legal affairs.

While it is unusual for the Board to deny the filing of an Application for Law Student Registration, the Board believes it important in this instance to put you on notice that the Board considers you to be an unsuitable applicant for admission to the Bar and to advise you that the Board's present intent is to deny any application you may later make, upon graduation from law school, to take the bar examination.

Please be advised that, if you disagree with the action of the Board, you may have a hearing by the Board by serving a written request for a hearing upon the Secretary of the Board within 15 days after receipt of this letter. The written request for a hearing shall advise the Board of the matters desired to be covered at the hearing. You shall have the right to be represented by counsel and to present witnesses or other evidence at the time and place fixed by the Board for the hearing.

Very truly yours,

STATE BOARD OF LAW EXAMINERS

Richard K. Andrews, Secretary
(Signature on Original
Retyped to conform
To Rule 33)

RKA/md

cc: Clerk of the Court
Members of the Board

IN THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT
OF MISSOURI
CENTRAL DIVISION

DONALD K. ALEXANDER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	90-4020-CV-C-5
	)	
EVANS & DIXON	)	
LAW FIRM et al.,	)	
	)	
Defendants.	)	

ORDER

Before this Court are motions to dismiss for failure to state a claim filed by two out of three groups of defendants in a civil rights suit against multiple defendants allegedly involved in the denial of plaintiff Donald K. Alexander's application for law student registration with the Missouri Supreme Court. One of the two motions requests in the alternative that this Court grant a motion for summary judgment. The defendants' motions also seek sanctions

under Federal Rule of Civil Procedure 11. Plaintiff Alexander alleges that members of the Thirteenth Judicial Circuit Bar Committee, the law firm of Evans & Dixon, and members of the Missouri State Board of Law Examiners conspired together, in violation of his constitutional rights, to deny him the right to practice law. Plaintiff requests actual damages in the amount of $2,505,000.00 and punitive damages in the amount of $5,010,000.00. In accordance with the reasoning below, this court states its intent to grant defendants' motions to dismiss, and in the alternative, grant defendant Evans & Dixon's motion for summary judgment. This court grants defendants' motions

for Rule 11 sanctions against plaintiff Alexander, and stays action on dismissal and summary judgment pending action on the Rule 11 sanctions.

FACTUAL BACKGROUND

Missouri Supreme Court Rule 8.07 charges the Missouri Board of Law Examiners ("Board"), with the assistance of the circuit bar committees, with the responsibility of investigating the moral character, fitness, and general qualifications of applicants for law student registration. Court Rule 8.04 is a prerequisite for taking the bar examination. The Board, with the investigative assistance of the Thirteenth Judicial Circuit Bar Committee ("Committee"), denied plaintiff Donald K. Alexander's

("Mr. Alexander") application for law student registration by letter dated December 27, 1989.

The Board stated in its letter of denial that the information submitted by Mr. Alexander in his application evidenced "a high degree of personal instability and inability to manage [his] affairs" making him "illsuited to counsel and represent others." The factors taken into consideration by the Board in its denial of Mr. Alexander's application were: (1) three criminal prosecutions against him for assault, theft, and tampering with a utility meter; (2) his numerous traffic violations; (3) his participation, usually as plaintiff, in ten civil actions, three of which are currently pending; (4) an unpaid judgment against him

of over $23,000.00 which was discharged in bankruptcy; (5) two personal bankruptcies; (6) three divorces; and (7) more than twenty-five different employments.

The Board's letter of denial stated, in accordance with Missouri Supreme Court Rule 8.12, that if Mr. Alexander disagreed with the Board's action that he could request a hearing with the Board by serving a written request within fifteen (15) days of receipt of the letter of denial. Mr. Alexander by letter dated January 2, 1990 requested the hearing, but failed to submit the required supplementary information. Mr. Alexander filed the petition in this action on January 3, 1990 without having proceeded on his request for a hearing before the Board.

Mr. Alexander claims in his petition that the members of the Board conspired with the members of the Committee and with Defendant Evans & Dixon, a St. Louis law

(**Note:** this partial page has been inserted to correct typing errors of omission by petitioner.)

firm, to deprive him of his constitutional rights in violation of 42 U.S.C. Section 1983 (1981) and 18 U.S.C. Section 241 (Supp. 1989). He claims that the conspiracy was motivated by his open criticism of "corruption and judicial bias."

Mr. Alexander further claims that the law firm Evans & Dixon participated in the conspiracy in retaliation for claims he had made against the firm in a separate prior action. The prior action, apparently pending in the Circuit Court of the City of St. Louis, was brought by Mr. Alexander as a pro se plaintiff, with the law firm of Evans & Dixon representing the defendant. Mr. Alexander claims that in the prior suit Evans & Dixon submitted a false affidavit, lied, and committed numerous breaches of the code of legal ethics.

Mr. Alexander reasons that the law firm participated in the conspiracy in order to "'put plaintiff in his place' and demonstrate that no pro se plaintiff litigant can challenge a powerful and politically prominent law firm such as Evans & Dixon and be admitted to the Missouri Bar."

The stated cause of action in the case at bar is violation of Mr. Alexander's rights under the "due process clause" of the Fifth Amendment, his rights under the "other rights retained clause" of the Ninth Amendment, and his rights under the "equal protection of the laws clause" of the Fourteenth Amendment to the United States Constitution. Mr. Alexander seeks compensatory and punitive damages in the amounts stated above.

Defendant Evans & Dixon moves for summary judgment based on the plaintiff's failure to show a meeting of the minds sufficient to support a claim of conspiracy. Evans & Dixon moves in the alternative for dismissal for failure to exhaust administrative remedies. Defendant members of the Committee move for dismissal based on their judicial immunity. Both Evans & Dixon and the members of the Committee move for dismissal based on insufficient factual allegations to support a claim upon which relief could be granted, and for recovery of their costs and reasonable attorneys' fee as authorized by Rule 11 of the Federal Rules of Civil Procedure.

ANALYSIS

A. Standard for Dismissal and Summary Judgment

The general rule of law is that a motion to dismiss for failure to state a claim should be denied "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102 (1957). Further the allegations of the complaint should be construed favorably to the pleader, Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1693 (1974), which in this case is Mr. Alexander. Therefore, in ruling on the motions for dismissal, this Court's construction of all allegations will be in favor of plaintiff Alexander.

Summary judgment can be granted only if there is no genuine dispute as to material fact and if the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. The moving party has the burden of showing that there is

no genuine dispute as to material fact. Celotex Corporation v. Catrett, 477 U.S. 317, 323-24, 106 S. Ct. 2548, 2553 (1986). Once the moving party has met this burden, the non-moving party must set forth evidence of specific facts showing the existence of a genuine issue for trial. Id.; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256-57, 106 S. Ct. 2505, 2514 (1986).

B. Conspiracy in Violation of 42 U.S.C. Section 1985(2)

Defendant Evans & Dixon law firm has moved for summary judgment based on plaintiff Alexander's failure to allege sufficient facts to show the existence of a conspiracy. The law firm has submitted supporting affidavits of members of their law firm stating that they had no personal knowledge of

Mr. Alexander's application for law school registration, nor did they participate in the decision to deny his application.

In deciding the motion for summary judgment, this Court must view the material facts, and the inferences properly drawn therefrom, in the light most favorable to the non-moving party, Mr. Alexander. Anderson at 255-56, 106 S. Ct. at 2513. Only the facts that may affect the outcome of the case under the governing law and which are necessary elements of the claim are "material." Id. Moreover, a factual dispute is "genuine" only if the evidence is such that a reasonable jury could return a verdict for the non-moving party, Mr. Alexander. Id.

Plaintiff Alexander in order to show a conspiracy for the purpose of 42

U.S.C. Section 1985(2) must allege facts with sufficient specificity and factual support to suggest "a meeting of the minds". Manis v. Sterling, 862 F.2d 679, 681 (8th Cir. 1988). Mr. Alexander can avoid summary judgment only by showing that the facts and circumstances he has relied upon have attained "the dignity of substantial evidence and not be such as merely to create a suspicion." Metge v. Baehler, 762 F.2d 621, 625 (8th Cir. 1985), cert. denied, 474 U.S. 1057, 106 S. Ct. 798 (1986) (citations omitted). Mr. Alexander has devoted many pages in his supporting briefs to very specific allegations of wrongdoing by Evans & Dixon, which he alleges occurred in a prior proceeding. However, nothing in the pleadings or in Mr. Alexander's response to the motion for summary judgment supports the

inference of "an injury upon" Mr. Alexander. Cometz v. Culwell, 850 F.2d 461, 464 (8th Cir. 1988) (citations omitted).

A "meeting of the minds" is a material element in a conspiracy cause of action. Manis, 862 F.2d at 681. Even construing the factual allegations in favor of Mr. Alexander, defendant Evans & Dixon has met the burden of showing that there was no conspiracy as a matter of law, and that, therefore, there was no genuine issue of material fact.

When the moving party has met their burden of showing that they are entitled to summary judgment as a matter of law, the non-moving party, Mr. Alexander, must "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

Plaintiff Alexander need not definitively prove conspiracy between the members of the defendants in order to defeat the motion for summary judgment. Mr. Alexander need only show that his case is not so one-sided that the defendants must prevail as a matter of law. Midwest Mechanical Contractors, Inc. v. Tampa Constructors, Inc., 659 F. Supp. 526, 529 (W.D. Mo. 1987). See also First National Bank of Arizona v. Cities Service Co., 391 U.S. 253, 289, 88 S. Ct. 1575, 1592-93 (1968). In making this determination, the plaintiff, as the non-moving party, must be given every benefit of the doubt. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge..."

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 2513 (1986).

Mr. Alexander's conclusory statements have not shown the existence of an agreement between members of the Committee and Evans & Dixon to deny his application for law student registration. Mr. Alexander has failed to plead facts which, if assumed true, would support an inference that the alleged conspirators had reached "a meeting of the minds." Defendant's motion for summary judgment must be granted.

B. Conspiracy in Violation of 18 U.S.C. Section 241

Plaintiff Alexander also alleges that defendants conspired to deny him his constitutional right to practice law in

violation of 18 U.S.C. Section 241 (Supp. 1989(. Defendant Evans & Dixon correctly note that this statute is a criminal statute, and thus that Mr. Alexander cannot pursue a private cause of action under 18 U.S.C. Section 241.

C. Finality of Administrative Decision

Defendant Evans & Dixon moves in the alternative for dismissal based on Mr. Alexander's failure to exhaust administrative remedies. Because this Court is dismissing Mr. Alexander's case on other grounds, the finality of the administrative decision need not be addressed. This Court notes parenthetically, however, that Mr. Alexander's claim is not ripe under Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S.

172, 186-194, 105 S. Ct. 3108, 3116-120 (1985). The Supreme Court in Williamson County stated the rule of law that a claim is premature until all administrative procedures have been exhausted and a final administrative decision has been reached.

Missouri Supreme Court Rule 8.12 provides that an applicant who has been denied law student registration can request a hearing before the Board. rule 8.12 further provides that this final decision of the Board may then be appealed to the Missouri Supreme Court. Mr. Alexander has not submitted the required information for a hearing before the Board, and has not appealed that final decision to the Missouri Supreme Court. He does not yet have a final decision from which to take his appeal. His claim is, therefore, not yet ripe

under Williamson County for adjudication by this Court.

D. Judicial Immunity

Defendant members of the Thirteenth Judicial Circuit Bar Committee also have moved for dismissal of Mr. Alexander's claim based on their judicial immunity. Missouri Supreme Court Rule 5.27 provides that the Committee "shall be considered as acting under the authority of (the Missouri Supreme Court), and as such shall be...protected and be free from suits and judgments for damages." Committee members evaluating the fitness of those applying for law student registration to take the bar examination are, therefore, entitled to judicial immunity. Accord

Childs v. Reynoldson, 777 F.2d 1305 (8th Cir. 1985). Therefore, dismissal as to defendant Committee is appropriate.

E. Failure to State Factual Allegations to Support Claim

Defendant law firm Evans & Dixon and defendant members of the Committee also claim that they are entitled to dismissal based on plaintiff Alexander's failure to state sufficient factual allegations to support a claim upon which relief can be granted. Under Rule 8(a)(2) of the Federal Rules of Civil Procedure a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." The complaint must provide the defendants with fair notice of what the

plaintiff's claim is and the grounds upon which it rests. 5 C. Wright & A. Miller, Federal Practice and Procedure Section 1202 (1969). Some courts have set a higher standard of specificity for civil rights complaints because of their complexity. United States v. City of Philadelphia, 644 F.2d 187, 204-05 (2d Cir. 1980); cf. Gometz v. Culwell, 850 F.2d 461, 464 (8th Cir. 1988); see generally 5 C. Wright & A. Miller, Federal Practice and Procedure Section 1281, at 364-65 (1969). Conclusory allegations are not sufficient to state a cause of action. Martin v. Aubuchon, 623 F.2d 1282, 1285-86 (8th Cir. 1980).

Mr. Alexander has not affirmatively supported his general and conclusory allegations that the Board, Committee, and members of the law firm of Evans &

Dixon engaged in a conspiracy. He alleges only that all defendants have a retaliatory motive for such conspiracy. Nothing in the documents submitted by the parties in the case at bar suggests that the defendants reached an agreement of any kind to prevent approval of Mr. Alexander's application for law student registration.

Neither has Mr. Alexander been able to show even the suggestion of an overt act by Evans & Dixon that resulted in denial of his application for law student registration. An overt act which results in injury is a principal element of conspiracy. Gometz, 850 F.2d at 464.

Dismissal of Mr. Alexander's complaint for failure to plead facts in support of his allegations of conspiracy is appropriate.

F. Rule 11 Sanctions

Defendants Evans & Dixon and members of the Committee also pray for sanctions against plaintiff Alexander in the form of recovery of costs and a reasonable attorney{s fee pursuant to Federal Rule of Civil Procedure 11. Rule 11 provides that the party who signs a pleading must have knowledge, information, and belief, formed after reasonable inquiry, that the pleading is "warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law..." One who signs a pleading in violation of this rule is subject to sanctions, which may include costs and a reasonable attorney's fee. Fed. R. Civ. P. 11. The standard for evaluating whether a pleading is subject to Rule 11 sanctions is an objective one. Lane v.

Peterson, 851 F.2d 193, 198 (8th Cir. 1988).

Mr. Alexander's complaint is legally unreasonable and is without factual basis whatsoever. Rule 11 sanctions are appropriate for a filing such as Mr. Alexander's, which is obviously devoid of merit under any objective standard. 2A J. Moore, J. Lucas, G. Grotheer, Moore's Federal Practice para. 11.02(3), at 11-20 (2d Ed. 1989).

CONCLUSION

Mr. Alexander has pled no facts which, if assumed true, would support an inference that the alleged conspirators had reached a "meeting of the minds" sufficient to support a cause of action for conspiracy. Summary judgment and, in the alternative, dismissal for failure to state a claim, is

the appropriate remedy for a meritless complaint. Also appropriate are Rule 11 sanctions for filing of a complaint in bad faith. Imposition of Rule 11 sanctions against Mr. Alexander will achieve the goals of avoidance of frivolous suits and abuses of the legal system.

Therefore, in accordance with the above reasoning, it is hereby

ORDERED that the motions of defendant Evans & Dixon and defendant Thirteenth Judicial Circuit Bar Committee for Rule 11 sanctions against plaintiff Donald K. Alexander for costs and reasonable attorneys, fees incurred in proceeding on this suit is granted. It if further

ORDERED that the attorneys of record representing the Thirteenth Judicial Circuit Bar Committee and the law firm of Evans & Dixon submit to this

Court on or before February 21, 1990, documentation on the amount of expenses and reasonable attorneys' fees incurred in this proceeding. It is further

ORDERED that defendant Evans & Dixon law firm's motion for summary judgment pursuant to Federal Rule of Civil Procedure 56 shall be stayed pending completion of the proceedings on the Rule 11 sanctions. it is further

ORDERED that the motion in the alternative of defendant Evans & Dixon for dismissal for failure to state a claim under 42 U.S.C. Section 1985(b) and 18 U.S.C. Section 241, pursuant to Federal Rule of Civil Procedure 12(b)(6), is stayed pending completion of the proceedings on the Rule 11 sanctions. It is further

ORDERED that the motion of defendant Thirteenth Judicial Circuit Bar

Committee for dismissal for failure to state a claim under 42 U.S.C. Section 1985(b) and 18 U.S.C Section 241, pursuant to Federal Rule of Civil Procedure 12(b)(6), is stayed pending completion of the proceedings on the Rule 11 sanctions.

SCOTT O. WRIGHT
United States District Judge

February 13, 1990.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 90-1477WM

Donald K. Alexander,	*	
Appellant	*	
v.	*	
Evans & Dixon Law	*	Appeal from
Firm; Richard K.	*	the United
Andrews; Gerre S.	*	States
Langton; David P.	*	District
Macoubrie; John L.	*	Court for
Oliver, Jr.; Lori	*	the Western
J. Levine; Loramel	*	District
P. Shurtleff; Thomas	*	of Missouri.
M. Dunlap; Bruce	*	
Beckett; Betty K.	*	(UNPUBLISHED)
Wilson; and Nancy	*	
Galloway,	*	
Appellees.		

Submitted: August 23, 1990

Filed: October 11, 1990

Before JOHN R. GIBSON, Circuit Judge, HEANY, Senior Circuit Judge, and FAGG, Circuit Judge.

PER CURIUM.

We have reviewed the record in no. 90-1477. We conclude this is a frivolous appeal and summarily affirm the District Court. See 8th Cir. R. 47B. Because this appeal merely continues Alexander's efforts to harass the appellees, we impose on Alexander damages of $500.00 and double costs. See Fed. R. App. P. 38.

A true copy,

Attest:

CLERK, U.S. COURT OF APPEALS

EIGHTH CIRCUIT.

(2)

Case No. 90-901

IN THE UNITED STATES SUPREME COURT

October-June 1990 Term

Donald K. Alexander, Petitioner

v.

Evans & Dixon, et al., Respondents

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit

Brief in Opposition to Allowance of Petition for Writ of Certiorari

---

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for Respondents Loramel P. Shurtleff, Thomas M. Dunlap, Bruce Beckett, Betty K. Wilson and Nancy Galloway

QUESTIONS PRESENTED

1. Whether the individual members of the Missouri Thirteenth Judicial Circuit Bar Committee are entitled to judicial immunity in performing their function of reviewing applications for admission to the bar.

2. Whether the District Court erred in granting protective orders which stayed Petitioner's discovery pending rulings on case-dispositive motions.

3. Whether a plaintiff proceeding under 42 U.S.C. §1983 is required to allege conspiracy with sufficient specificity to show a meeting of the minds and a common plan of action among the alleged conspirators.

4. Whether a plaintiff alleging conspiracy in a 42 U.S.C. §1983 action can overcome summary judgment affidavits specifically denying the alleged conspiratorial facts with counter-affidavits alleging conspiracy in a conclusory manner.

5. Whether Petitioner's 42 U.S.C. §1983 claim was not ripe for determination because Petitioner failed to exhaust his state remedies.

6. Whether a jury could reasonably return a verdict in Petitioner's favor based on Petitioner's allegations.

LIST OF PARTIES

Petitioner

Donald K. Alexander
Columbia, Missouri

Respondents

Evans & Dixon Law Firm
St. Louis, Missouri

Individual Members of the
Missouri Board of Bar Examiners:
Richard K. Andrews
Gerre S. Langton
David P. Macoubrie
John L. Oliver, Jr.
Lori J. Levine

Individual Members of the
Missouri Thirteenth Judicial Circuit Bar Committee:
Loramel P. Shurtleff
Thomas M. Dunlap
Bruce Beckett
Betty K. Wilson
Nancy Galloway

TABLE OF CONTENTS

Questions Presented i

List of Parties ii

Table of Contents iii

Table of Authorities iv
Cases iv
Other Authorities vii

Constitutional Provisions, Treaties, Statutes, Ordinances and Regulations viii

Statement of Case 1
Nature of Case 1
Course of Proceedings 1
Summary of District Court Disposition 3
Disposition in Court of Appeals 4
Statement of Facts 4

Summary of Argument 8

Argument 10
Point 1: Judicial Immunity 10
Point 2: Discovery Protective Orders 13
Point 3: Pleading of Conspiracy 15
Point 4: Summary Judgment 25
Point 5: Ripeness 26
Point 6: Jury Question 28

Conclusion 29

TABLE OF AUTHORITIES

Cases

Billingsley v. Kyser,
691 F.2d 388 (8th Cir. 1982) 13

Brennan v. Local Union No. 639,
494 F.2d 1092 (D.C. Cir. 1974) 14

Chaney v. State Bar of California,
386 F.2d 962 (9th Cir. 1967) 27

Childs v. Reynoldson,
777 F.2d 1305 (8th Cir. 1985) 11

Clark v. State of Washington,
366 F.2d 678 (9th Cir. 1966) 12

Deck v. Leftridge,
771 F.2d 1168 (8th Cir. 1985) 16, 19

Ellingson Timber Co. v. Great Northern Railway Co.,
424 F.2d 497 (9th Cir. 1970) 14

Feldman v. State Board of Law Examiners,
438 F.2d 609 (8th Cir. 1971) 27

Fonda v. Gray,
707 F.2d 435 (9th Cir. 1983) 23

Forrester v. White,
484 U.S. 219 (1988) 11

Francis-Sobel v. University of Maine,
597 F.2d 15 (1st Cir. 1979) 21

Gometz v. Culwell,
850 F.2d 461 (8th Cir. 1988) 17

Green v. City of N.Y. Medical Examiner's Office,
723 F. Supp. 973 (S.D.N.Y. 1989) 21

Henzel v. Gerstein,
608 F.2d 654 (5th Cir. 1979) 22

Katz v. Morgenthau,
709 F. Supp. 1219 (S.D.N.Y. 1989) 21

Manis v. Sterling,
862 F.2d 679 (8th Cir. 1989) 16

Martin v. Delaware Law School,
625 F. Supp. 1288 (D. Del. 1985) 22

McCaw v. Winter,
745 F.2d 533 (8th Cir. 1984) 12

McClain v. Kitchen,
659 F.2d 870 (8th Cir. 1981) 17

Moses v. Parwatikar,
813 F.2d 891 (8th Cir. 1987) 12

Mosher v. Saalfield,
589 F.2d 438 (9th Cir. 1978) 23

Pierson v. Ray,
386 U.S. 547 (1967) 12

Rhodes v. Meyer,
334 F.2d 709 (8th Cir.),
cert. denied, 379 U.S. 915 (1964) 12

San Filippo v. United States Trust Co.,
737 F.2d 246 (2d Cir. 1984),
cert. denied, 470 U.S. 1035 (1985) 21

Sanden v. Mayo Clinic,
495 F.2d 221 (8th Cir. 1974) 14

Schucker v. Rockwood,
846 F.2d 1202 (9th Cir. 1988) 23

Simons v. Bellinger,
643 F.2d 774 (D.C. Cir. 1980) 12

Sinclair Refining Co. v. Jenkins Petroleum Process Co.,
289 U.S. 689 (1972) 14

Slotnick v. Staviskey,
560 F.2d 31 (1st Cir. 1977),
cert. denied, 434 U.S. 1077 (1978) 20

Smallwood v. United States,
358 F. Supp. 398 (E.D. Mo.),
aff'd, 486 F.2d 1407 (8th Cir. 1973) 13

Smith v. Bacon,
699 F.2d 434 (8th Cir. 1983) 16, 19

Sooner Products Co. v. McBride,
708 F.2d 510 (10th Cir. 1983) 24

Sparkman v. McFarline,
601 F.2d 261 (7th Cir. 1979) 23

Sparks v. Character and Fitness Committee of Kentucky,
895 F.2d 428 (6th Cir. 1988) 11

Storey v. United States,
629 F.2d 1174 (N.D. Miss., 1986) 22

Tarkowski v. Robert Bartlett Realty,
644 F.2d 1204 (7th Cir. 1980) 22, 23

West v. Missouri Board of Law Examiners,
520 F. Supp. 159 (E.D. Mo.),
aff'd, 676 F.2d 702 (8th Cir. 1981) 27

Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City,
473 U.S. 172 (1985) 27

Other Authorities

42 U.S.C. §1983 25

Missouri Supreme Court Rule 5.10 ..... viii, 10

Missouri Supreme Court Rule 5.26 ..... ix, 10

Missouri Supreme Court Rule 5.27 ..... ix, 10

Missouri Supreme Court Rule 8.07 ..... x, 10, 25

Missouri Supreme Court Rule 8.12 ..... xi, 26, 28

§484.040 RSMo. (1986) ..... viii, 12

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS

§484.040 RSMo. (1986):

The power to admit and license persons to practice as attorneys and counselors in the courts of record of this state, or in any of them, is hereby vested exclusively in the supreme court and shall be regulated by rules of that court.

Missouri Supreme Court Rule 5.10:

There is hereby established in each Judicial Circuit a Bar Committee to be composed of not less than four lawyer members and not less than one lay member, who shall be appointed by this Court and shall serve without compensation. The term of each member shall be for four years, with the term of at least one lawyer member expiring each year. Each member shall serve until his successor is appointed and qualified. Members of the Committee in excess of five shall likewise be appointed to serve for staggered terms of not to exceed four years. After each member's term expires, his successor shall be appointed for a term of four years. It is declared to be the general policy of this Court that a member shall not be called on to serve more than two successive terms. Each member shall take an oath that he will fairly and impartially, to the best of his ability, administer Rules 4, 5 and 6.

In the event this Court appoints more than five and as many as ten members of a Bar Committee in any Judicial Circuit, the Committee may sit en banc or in divisions as the Committee may from time to time determine. Each Division shall be composed of not less than

four lawyer members and not less than one lay member and shall have the same powers and duties and follow the same procedures as provided by these Rules for the full Committee. A Division shall designate one of its members as the presiding officer and one to keep minutes of its proceedings. The Chairman of the full Committee shall be the chief administrative officer and shall assign investigations and hearings to the Divisions so that no more than one Division shall have jurisdiction of the same matter. The Committee Chairman may sit as a member of any Division.

A Bar Committee or Division shall not be disabled from functioning simply because the lay position has not been filled or becomes vacant, and a formal or informal hearing may proceed even though no lay member is present.

Missouri Supreme Court Rule 5.26:

In addition to the other powers and duties conferred upon them, the General Chairman, the Advisory Committee, and the Circuit Bar Committees shall aid and assist the Board of Law Examiners in their duties under Rule 8.07.

Missouri Supreme Court Rule 5.27:

Nothing in this Rule 5 shall be construed as a limitation upon the powers of this Court to govern the conduct of its officers and any appointment or employment hereunder may be revoked at will. No provision of this Rule 5 shall limit the right of any individual to seek any remedy afforded by law. However, it is the intent of this Court that members of the Advisory Committee, Circuit Bar Committees, staff attorneys, special representatives, staff, and all appointed or employed counsel acting in the course and scope of their official duties shall be

considered as acting under the authority of this Court, and as such shall be a part of the Judicial branch of state government and shall be protected and be free from suits and judgments for damages. This Rule 5 shall not constitute an exclusive method for regulating the practice of law or the unauthorized practice of law by laypersons or corporations.

Missouri Supreme Court Rule 8.07:

No applicant for registration as a law student and no applicant to take the bar examination shall be registered or examined until the respective application has been considered and approved by the Board of Law Examiners. Prior to granting approval for registration as a law student and prior to granting approval to take the bar examination, the Board of Law Examiners shall, in each instance, investigate the moral character of the applicant. In so doing, it may call upon the General Chairman of the Bar Committees, the Advisory Committee and the Bar Committee of the Circuit where the applicant resides to make such investigation and report its findings to the Board, and the Board may make such further investigation as may be necessary to fully inform itself concerning the moral fitness of the applicant. The Board may require applicants to submit fingerprints. In no event will permission be granted to register as a law student or to take the bar examination until the investigation as to moral character has been completed.

In every such instance the Board may obtain such information as bears upon the character, fitness and general qualifications of the candidate and take and hear testimony, administer oaths and affirmations and compel, by subpoena issued by this Court, at the request of the applicant or of the Board, the attendance of witnesses and the production of books, papers and documents. Any

member of the Board may administer such oaths and affirmations.

Missouri Supreme Court Rule 8.12:

Should the Board of Law Examiners refuse to grant approval to any applicant for registration as a law student or any applicant to take the bar examination, or to any applicant for admission to practice without examination, such applicant may have a hearing by the Board by serving a written request for a hearing upon the Secretary of the Board within fifteen days after notice of refusal has been served upon the applicant. The written request for the hearing made to the Board shall advise the Board of the matters desired to be covered at the hearing. The applicant shall have the right to be represented by counsel, and present evidence, at the time and place fixed by the Board for the hearing. In any such matter, the Board may order a hearing on its own motion either before or after action on any application.

In connection with such hearings, the Board shall have the power to take and hear testimony, administer oaths and affirmations and at the request of the applicant or the Board, the Clerk of this Court shall issue subpoenas for witnesses and subpoenas duces tecum. Any member of the Board may administer such oaths and affirmations. A quorum of the Board may hold hearings but any decision shall be by a majority of the Board.

The Board's decision upon such hearing shall be made in writing setting forth the reasons therefore, and a copy thereof shall be served upon the applicant. An aggrieved party may appeal to this Court from an adverse decision by filing a notice of appeal which shall set forth in writing the facts and reasons on which it is based. Six copies shall be filed with the Secretary of the Board within fifteen days after the Board's order or ruling has been

served upon applicant. The Board shall within thirty days after receipt of the notice of appeal file with the Clerk of this Court the original notice of appeal together with a statement of the Board's action and position in the matter, and when evidence has been taken, a transcript of such portions of the evidence as considered necessary by the Board. A copy of the statement of the Board and such transcript shall at the same time be served upon the applicant. The applicant may, at applicant's own expense, file a transcript of any other portion of the evidence heard by the Board as applicant considers necessary and serve a copy upon the Secretary of the Board. This Court will not hear or receive additional evidence.

This Court on application of the Board may make such orders as it shall consider appropriate with regard to payment of or security for the costs and other expenses of hearings and appeals provided for herein.

STATEMENT OF CASE

Nature of Case

Petitioner (called "Alexander" in this brief) filed this action in the United States District Court, Western District of Missouri, Central Division, under 42 U.S.C. §1983, alleging that the Respondents conspired to deprive him of federally protected rights and privileges by denying his Application for Law Student Enrollment. Alexander also alleged criminal conspiracy against him under 18 U.S.C. §241 (he does not contest dismissal of this claim in his Petition for Writ of Certiorari; therefore, it is not addressed in this brief). Alexander sought actual damages of $2,505,000 and punitive damages of $5,010,000.

Course of Proceedings

The course of the proceedings below—insofar as relevant to the Petition for Writ of Certiorari—is derived from the District Court's docket sheet and from pleadings and orders in the District Court file. All date references are to the year 1990.

Alexander filed his original Petition [*sic*] on January 3. On January 30 Alexander moved for leave to file a First Amended Petition [*sic*]; District Judge Scott O. Wright granted leave on February 13.

The Missouri Thirteenth Judicial Circuit Bar Committee (on behalf of the individual members of which this brief is submitted) moved for dismissal on the ground of failure to state a cause of action and for FRCP 11 sanctions on January 18. On February 2 it renewed its motion to dismiss as to the First Amended Petition.

Evans & Dixon moved for summary judgment or alternatively for dismissal and for FRCP 11 sanctions on January 22.

The Board of Law Examiners moved for additional time to plead on January 22; this motion was granted on February 13 and the board was given until February 16 to plead.

Alexander had filed a certificate of service of interrogatories, document requests and requests for admissions on February 5. On February 6 Alexander filed a notice of 28 depositions. Motions for protective orders to stay discovery were filed on February 7 by the Board of Law Examiners, on February 8 by Evans & Dixon, and on February 22 by the Thirteenth Circuit Bar Committee. On February 13 Judge Wright granted a stay of all discovery.

On February 13 Judge Wright also granted the FRCP 11 sanction motions filed by the Thirteenth Circuit Bar Committee and Evans & Dixon and stayed action on their motions for dismissal and summary judgment pending completion of sanction proceedings.

Evans & Dixon waived FRCP 11 sanctions on February 16, and on March 8 the Thirteenth Circuit Bar Committee did the same. Subsequently, on March 16, Judge Wright granted the Thirteenth Circuit Bar Committee's motion to dismiss for failure to state a cause of action and granted Evans & Dixon's motion for dismissal for failure to state a cause of action and alternative summary judgment motion; on March 16 Judge Wright also amended his February 13 order by not charging FRCP 11 sanctions against Alexander in favor of the Thirteenth Circuit Bar Committee and Evans & Dixon.

The Board of Law Examiners filed motions for summary judgment and FRCP 11 sanctions on February 15; on March 16 Judge Wright granted the motion for FRCP 11 sanctions and stayed the summary judgment

motion pending completion of sanction proceedings. On May 11, Judge Wright granted the summary judgment motion and awarded sanctions to the Board. (Note: Because FRCP 11 sanctions were not awarded in favor of the Thirteenth Circuit Bar Committee, this brief does not address the issue of the propriety of such sanctions.)

Alexander filed a premature notice of appeal on March 20 (because there were no final rulings on the motions of the Board of Law Examiners until May 11). On May 18 Alexander "re-entered" his Notice of Appeal.

Summary of District Court Disposition

As set out in the Appendix to Alexander's Petition and in the District Court file, the District Court disposition was:

As to the Thirteenth Circuit Bar Committee: Motion to dismiss for failure to state cause of action granted March 16, 1990. Motion for FRCP 11 sanctions waived.

As to Evans & Dixon: Motion to dismiss for failure to state cause of action and alternative motion for summary judgment granted March 16, 1990. Motion for FRCP 11 sanctions waived.

As to Board of Law Examiners: Motion for summary judgment and for FRCP 11 sanctions granted on May 11, 1990. $3,200 awarded to the Office of the Missouri Attorney General. $5,000 awarded to the law firm of Swanson, Midgley.

Disposition in Court of Appeals

As set out in the Appendix to Alexander's Petition, on October 11, 1990, the United States Court of Appeals for the Eighth Circuit concluded Alexander's appeal was frivolous, summarily affirmed the District Court, and imposed $500 damages on Alexander pursuant to FRAP 38, plus double costs.

Statement of Facts

Alexander was in the middle of his second year at the University of Missouri-Columbia School of Law in December 1989. (January 2, 1990 letter attached to Alexander's Petition) On December 27, 1989, Richard K. Andrews, secretary of the Board of Law Examiners, sent a letter to Alexander advising that the Board had denied Alexander's Application for Law Student Registration, that the Board would not be favorably disposed to recommend approval of any subsequent application by Alexander for admission to the bar, and that Alexander had the right to a hearing before the Board if he disagreed with the Board's action. The letter stated:

> The matters contained in your Application for Law Student Registration reflect overwhelming evidence of your instability and inability to manage your personal affairs, including: three criminal prosecutions for assault, theft and tampering with a utility meter (all of which were dismissed); traffic violations so numerous that you did not list them; ten civil actions, in most of which you were the plaintiff and three of which are still pending; an unpaid judgment in excess of $23,000 which

> you discharged by taking bankruptcy; two personal bankruptcies in 1970 and 1982; three divorces; and more than 25 different employments. One who has exhibited such a high degree of personal instability and inability to manage one's own affairs is ill-suited to counsel and represent others in the handling of their legal affairs.

(December 27, 1989 letter attached to Alexander's Petition and included in Appendix to Alexander's Brief)

Alexander responded with a letter to Andrews which not only demanded a hearing before the Board but also set out at great length Alexander's allegations that the Board's action resulted from a conspiracy involving the Board, the Thirteenth Circuit Bar Committee, Evans & Dixon, and even various judges of the St. Louis County and City Circuit Courts, the Eastern District Missouri Court of Appeals and the Missouri Supreme Court. (January 2, 1990 letter attached to Alexander's Petition)

As detailed in Alexander's January 2, 1990 letter and subsequent First Amended Petition and other filings, here is the gist of Alexander's allegations:

- Alexander was a *pro se* plaintiff in a lawsuit originally filed in St. Louis County Circuit Court against AAIM Management Association and later transferred to St. Louis City Circuit Court on a change of venue. Evans & Dixon represented AAIM.
- Alexander disagreed with various pretrial rulings in the AAIM case and felt the judges were biased in favor of Evans & Dixon, whose attorneys he accused of lying, filing false affidavits and violating canons of legal ethics.
- Alexander sought a writ of mandamus from the Eastern District Missouri Court of Appeals, which was denied on the same day it was filed. He then sought a

writ of mandamus from the Missouri Supreme Court, which was also denied. Alexander thus suspects the judges of these two appellate courts of complicity in the conspiracy.

- Gerre S. Langton, a partner in Evans & Dixon, is a member of the Board of Law Examiners and an individual defendant/respondent in this case. Alexander alleges that because of Evans & Dixon's contacts with Alexander in the AAIM case and Alexander's complaints against Evans & Dixon, Langton conspired with members of the Thirteenth Circuit Bar Committee and the Board of Law Examiners to deny Alexander's Application for Law Student Registration.
- Alexander further alleges that the conspiracy against him also results from the fact that he has been "openly critical" of "bias and corruption" in several Missouri and Illinois courts.

As set out in the defendants/respondents' pleadings, the facts are:

- "Neither Gerre S. Langton nor any partner, agent or personal representative of the lawfirm of Evans & Dixon, had any personal knowledge about or participated in the decision by the Board of Law Examiners to deny Donald K. Alexander's Application for Law Student Registration." (Affidavit of Richard K. Andrews, Board of Law Examiners secretary, filed January 22, 1990)
- Gerre S. Langton stated: "I had no knowledge that Donald K. Alexander had filed an Application for Law Student Registration with the Board of Law Examiners, nor did I have any knowledge that his Application had been denied by the Board until ... I received a copy of Richard K. Andrew's ... letter addressed to Mr. Alexander [denying Alexander's application]." (Affidavit of Gerre S. Langton filed January 22, 1990)

- Gerre S. Langton further stated: "At no time have I had contact with any member of the Thirteenth Judicial Circuit Bar Committee concerning Donald K. Alexander's Application for Law Student Registration. At no time have I instructed any other person to contact any member of the Thirteenth Judicial Circuit Bar Committee to take any action with respect to Donald K. Alexander's Application for Law Student Registration." (Supplemental Affidavit of Gerre S. Langton filed March 5, 1990)
- The Thirteenth Circuit Bar Committee recommended approval of Alexander's Application for Law Student Registration. (Affidavit of John Scully filed January 18, 1990; Affidavit of John Scully filed February 2, 1990; Affidavit of Richard K. Andrews filed February 15, 1990 and Exhibit C thereto)
- Alexander still has rights to a hearing on the denial of his Application for Law Student Registration and an appeal to the Missouri Supreme Court, and the Missouri Supreme Court has provided an impartial surrogate for the Board of Law Examiners to conduct the hearing. (Affidavit of Richard K. Andrews filed February 15, 1990, pp. 11, 12)

SUMMARY OF ARGUMENT

Alexander's claims against the members of the Missouri Thirteenth Judicial Circuit Bar Committee were properly dismissed because the Committee members are entitled to absolute quasi-judicial immunity in performing their functions in the process of reviewing law student applications. The members operate as an arm of the Missouri Supreme Court in this process, performing adjudicative acts involving the exercise of discretion and judgment. Case law recognizes that determination of the composition of the bar is historically and traditionally a judicial function. Conclusory allegations of conspiracy do not overcome judicial immunity.

The District Court did not err in granting a stay of discovery sought by Alexander. Under the principle of judicial parsimony, the stay was appropriate because case-dispositive motions were then pending. Time and money would have been wasted had discovery been allowed to proceed—particularly in view of Alexander's clearly deficient pleadings and his inability to refute the summary judgment affidavits of the defendants/respondents.

The District Court properly sustained motions to dismiss for failure to state a cause of action and motions for summary judgment because Alexander's conclusory allegations of conspiracy were clearly insufficient under case law governing 42 U.S.C. §1983 cases and because he failed to refute the summary judgment affidavits filed by defendants/respondents. Case law in virtually every circuit refutes Alexander's notion that merely to charge conspiracy is to guarantee extensive discovery and a jury trial. The cases say that in §1983 cases, conspiracy must be pleaded by alleging facts sufficient to show a meeting of the minds and a common plan of action among the alleged conspirators. Alexander failed to allege such facts; instead, he

recited a series of events and inferred conspiracy from the events. Alexander's unsupported inferences were conclusively negated by the summary judgment affidavits filed by defendants/respondents, and his counter-affidavits were similarly devoid of factual support for his conspiracy theory.

In any event, Alexander could not have been entitled to recover from the Thirteenth Judicial Circuit Bar Committee because the Committee took no action against him but rather recommended approval of his Application for Law Student Registration.

Further, Alexander's action was properly dismissed because he failed to exhaust his state remedies. He still has the rights to a hearing before the Missouri Board of Bar Examiners and to an appeal to the Missouri Supreme Court. Because there has been no final decision on his Application for Law Student Registration and because he has not yet sustained damage, his claims are not ripe for determination under 42 U.S.C. §1983.

Finally, Alexander's conclusory allegations of conspiracy would not even make a case submissible to a jury, and no reasonable jury could find in his favor in the face of respondents' contrary evidence. This is particularly true with respect to the Thirteenth Judicial Circuit Bar Committee which took no action against him but rather recommended approval of his Application for Law Student Registration.

ARGUMENT

Point 1: Judicial Immunity

Question presented: Whether the individual members of the Missouri Thirteenth Judicial Circuit Bar Committee are entitled to judicial immunity in performing their function of reviewing applications for admission to the bar.

In their motions to dismiss, the members of the Thirteenth Circuit Bar Committee asserted absolute quasi-judicial immunity. The Missouri Circuit Bar Committees perform their functions in the process of reviewing law student applications under Missouri Supreme Court Rule 8.07 and Missouri Supreme Court Rule 5.26. Of particular note is Missouri Supreme Court Rule 5.27, which states in relevant part:

> . . . members of the . . . Circuit Bar Committees . . . acting in the course and scope of their official duties shall be considered as acting under the authority of this Court, and as such shall be a part of the Judicial branch of state government and shall be protected and be free from suits and judgments for damages. . . .

Thus, it is clear that the members of the Circuit Bar Committees, appointed by the Missouri Supreme Court under Missouri Supreme Court Rule 5.10, perform adjudicative acts involving the exercise of discretion and judgment. Given these facts, under the governing case law, District Judge Scott O. Wright was clearly correct in dismissing Alexander's action against the Thirteenth Circuit Bar Committee on the ground of quasi-judicial immunity.

Childs v. Reynoldson, 777 F.2d 1305, 1306 (8th Cir. 1985), held that members of the Iowa Board of Law Examiners "acted as an arm of or surrogate for the Supreme Court of Iowa," entitling the board members to "absolute quasi-judicial immunity" against suit by a bar applicant who twice failed the Iowa bar examination.

It is true that *Childs* predated the decision in *Forrester v. White*, 484 U.S. 219 (1988), in which this Court held that judges' non-judicial acts are not cloaked with immunity in 42 U.S.C. §1983 actions. However, the well-reasoned case of *Sparks v. Character and Fitness Committee of Kentucky*, 895 F.2d 428 (6th Cir. 1988), was decided in view of *Forrester* and concluded that the act of considering an application to the bar is a judicial act entitled to immunity even when performed by nonjudicial officers to whom it has been lawfully delegated. The plaintiff had alleged violation of various constitutional rights and sued under 42 U.S.C. §1983. In affirming the District Court's dismissal of the action against the Chief Justice of the Kentucky Supreme Court and the members of the Kentucky Board of Bar Examiners and the Character and Fitness Committee of Kentucky, the Sixth Circuit stated:

> Some functions performed by courts are so inherently related to the essential functioning of the courts as to be traditionally regarded as judicial acts. Determining the composition of the bar is just such an historic and traditional function. The establishment of criteria for determining the intellectual competence, academic preparedness, and moral fitness of persons who petition the court for the privilege of undertaking the confidential trust of serving the court as one of its professional officers has always been a function confined to the courts themselves.

And so it is in Missouri, where §484.040 RSMo. (1986) provides that the "power to admit and license persons to practice as attorneys and counselors in the courts of ... this state ... is hereby vested exclusively in the Supreme Court and shall be regulated by the rules of that Court." Thus, clearly, the members of the Thirteenth Circuit Bar Committee, appointed by the Missouri Supreme Court, are entitled to absolute immunity from Alexander's lawsuit.

See also *Rhodes v. Meyer*, 334 F.2d 709, 718 (8th Cir.), *cert. denied*, 379 U.S. 915 (1964) (state supreme court justices and members of state integrated bar, among others, entitled to immunity as a result of their performance of official tasks); *McCaw v. Winter*, 745 F.2d 533, 534 (8th Cir. 1984) (state judge and state court clerk, acting pursuant to judge's directions, protected by absolute immunity); *Simons v. Bellinger*, 643 F.2d 774, 777-85 (D.C. Cir. 1980) (members of District of Columbia Committee on Unauthorized Practice of Law entitled to absolute immunity in exercising inherently judicial power delegated by the court); and *Clark v. State of Washington*, 366 F.2d 678, 681 (9th Cir. 1966) (state bar association protected by absolute immunity in disbarment actions because association is an integral part of the judicial process).

Alexander's broad, conclusory allegations of conspiracy do not overcome judicial immunity. The doctrine of judicial immunity is recognized in 42 U.S.C. §1983 cases. *Pierson v. Ray*, 386 U.S. 547 (1967). Because absolute immunity forbids scrutiny of an official's motives, allegations that an action was taken pursuant to a conspiracy can mean no more than that the act was done in bad faith or with malice, neither of which defeats absolute immunity. The Eighth Circuit Court of Appeals has recently held that an allegation of conspiracy does not abrogate absolute judicial immunity. *Moses v. Parwatikar*, 813 F.2d 891, 893

(8th Cir. 1987). *Accord, Billingsley v. Kyser*, 691 F.2d 388, 389 (8th Cir. 1982); and *Smallwood v. United States*, 358 F. Supp. 398, 403-05 (E.D. Mo.), *aff'd*, 486 F.2d 1407 (8th Cir. 1973).

Accordingly, the District Court did not err in dismissing Alexander's claims against the members of the Thirteenth Circuit Bar Committee on the ground of judicial immunity, and the Court of Appeals did not err in dismissing Alexander's appeal on this ground.

Point 2: Discovery Protective Orders

Question presented: Whether the District Court erred in granting protective orders which stayed Petitioner's discovery pending rulings on case-dispositive motions.

Alexander filed extensive discovery requests, including interrogatories, document requests and requests for admission, on February 5, 1990. On February 6, 1990, Plaintiff filed a notice of taking depositions of 28 persons, including all the judges of the Missouri Supreme Court and several judges of the Eastern District Missouri Court of Appeals and the St. Louis City and St. Louis County Circuit Courts. On February 13, 1990, in response to motions filed by defendants, District Judge Wright entered a protective order staying all discovery. At that time, motions by the Thirteenth Circuit Bar Committee to dismiss Alexander's petition and by Evans & Dixon for summary judgment were pending. Also at that time, the Board of Law Examiners had requested additional time to file its response to Alexander's petition; additional time was granted on February 13, 1990, the same day the protective order was entered.

Alexander contends the entry of the protective order improperly denied him the right of discovery. To the contrary, Judge Wright's protective order was providently granted under the "principle of judicial parsimony" by which, where one issue may be determinative of a case, the court has discretion to stay discovery until the critical issue has been decided. ***See*** *Sinclair Refining Co. v. Jenkins Petroleum Process Co.*, 289 U.S. 689 (1972). When the order was entered, as noted, Judge Wright had before him Respondents' motions which likely would be case-dispositive, as discussed under Issues 3 and 4 below. It would have been a waste of time and money to have proceeded with discovery. Trial courts have broad discretion in granting protective orders and may be reversed only on a clear showing of abuse of discretion. *Sanden v. Mayo Clinic*, 495 F.2d 221 (8th Cir. 1974).

For a closely analogous case, see *Brennan v. Local Union No. 639*, 494 F.2d 1092 (D.C. Cir. 1974), in which the District Court had stayed all discovery until five days after ruling on a motion for summary judgment filed by the defendant Secretary of Labor. On appeal, the plaintiff union contended the stay of discovery was prejudicial. The appellate court disagreed, stating that the stay was within the trial court's discretion and did not deny due process in view of the ultimate determination that the union failed to raise any factual dispute as to a material fact and that the defendant was entitled to summary judgment. ***See also*** *Ellingson Timber Co. v. Great Northern Railway Co.*, 424 F.2d 497, 499 (9th Cir. 1970) (one purpose of rule authorizing separate trials is to permit deferral of costly and possibly unnecessary discovery proceedings pending resolution of potentially dispositive preliminary issues).

Thus, Judge Wright did not err in granting a stay of the discovery sought by Alexander, particularly in view of Alexander's clearly deficient pleadings and inability to

refute the summary judgment affidavits of the defendants/ respondents.

Point 3: Pleading of Conspiracy

Question presented: Whether a plaintiff proceeding under 42 U.S.C. §1983 is required to allege conspiracy with sufficient specificity to show a meeting of the minds and a common plan of action among the alleged conspirators.

The Thirteenth Circuit Bar Committee submits that the District Court properly dismissed Alexander's complaint because it did not sufficiently allege conspiracy. The fallacy of Alexander's contrary contention is easily demonstrated by pursuing his argument to its logical conclusion.

Alexander appears to take the position that whenever a plaintiff alleges a conspiracy, trial judges are prohibited from granting summary judgments or motions to dismiss in favor of defendants. His argument may be summarized as follows: Proof of a conspiracy is subtle; credibility of witnesses is a key, and only a jury can determine credibility; therefore, judges are precluded from judging the pleadings and affidavits and deciding that there are no genuine issues of fact or no cause of action. In short, according to Alexander, to charge conspiracy is to ensure a jury trial and extensive pretrial discovery.

Proving a conspiracy may be difficult, but charging conspiracy is easy. If Alexander's argument is accepted, the floodgates are open. Any aggrieved person need only dream up a "conspiracy" in order to harass and punish those making an adverse decision by dragging the decision-makers through time-consuming and expensive pretrial discovery and trials. At considerable taxpayer expense,

any aggrieved person will have a sure-fire method of making those who handed down the decision suffer.

Fortunately, the courts have recognized the problems posed by Alexander's position and have rejected it. Case law says that he who charges conspiracy must present detailed allegations of conspiracy to avoid dismissal or summary judgment. Mere suspicion is not enough. For example, in *Deck v. Leftridge*, 771 F.2d 1168, 1170 (8th Cir. 1985), a 42 U.S.C. §1983 case brought by a prisoner who charged that public defenders were conspiring with Missouri appellate judges, the Eighth Circuit stated in the course of upholding the District Court's dismissal of the complaint:

> [A]llegations of a conspiracy must be pleaded with sufficient specificity and factual support to suggest a "meeting of the minds." *Smith v. Bacon*, 699 F.2d 434, 436 (8th Cir. 1983); *see White v. Bloom*, 621 F.2d 276, 281 (8th Cir), *cert. denied*, 449 U.S. 995 ... (1980). To be sufficiently specific:
>
> > [t]he factual basis need not be extensive, but it must be enough to avoid a finding that the suit is frivolous. [Citation omitted.] Appellants must at least allege that "the defendants had directed themselves toward an unconstitutional action by virtue of a mutual understanding," and provide some facts "suggesting such a 'meeting of the minds.'" [Citation omitted.]

Accord, Manis v. Sterling, 862 F.2d 679 (8th Cir. 1989) (upholding dismissal of prisoner's 42 U.S.C. §1983 action alleging conspiracy between public defenders and judges where plaintiff's pleading lacked "sufficient specificity and

factual support to suggest a 'meeting of the minds'"); *Gometz v. Culwell*, 850 F.2d 461, 463-4 (8th Cir. 1988) (civil rights plaintiff's action dismissed where plaintiff failed to allege with sufficient particularity and demonstrate with specific material facts that defendants agreed and conspired together to deprive plaintiff of federally protected rights); *McClain v. Kitchen*, 659 F.2d 870 (8th Cir. 1981) (upholding dismissal of a prisoner's 42 U.S.C. §1983 action alleging conspiracy among a prosecutor, public defender and judge where plaintiff's pleading had "insufficient facts to support a claim for relief").

In the case at bar, District Judge Wright properly found insufficient factual support to maintain Alexander's 42 U.S.C. §1983 action alleging a conspiracy. Although the complaint is directed against Evans & Dixon, members of the Thirteenth Circuit Bar Committee, and members of the Board of Law Examiners, Alexander also appears to be alleging a multi-layered conspiracy among numerous other attorneys and judges not named as defendants. In conclusory fashion, Alexander alleges, "Defendants entered into said criminal conspiracy against plaintiff because plaintiff has been openly critical of the corruption and judicial bias which plaintiff alleges exists within several Missouri and Illinois Courts...." (Plaintiff's Petition, ¶2) Alexander also alleges that "said criminal conspiracy ... was intentional, willful, wanton, with great malice and hatred, with intent to injure, oppress, threaten, and intimidate plaintiff because plaintiff sought to exercise his constitutional rights to challenge the false affidavit, lies, and breach of legal ethics perpetrated upon plaintiff by Evans & Dixon Law Firm in open court...." (Plaintiff's Petition, ¶3) Alexander incorporated his letter to Richard Andrews, secretary of the Board of Law Examiners, as part of his petition. It is in this letter that he alleges a multi-faceted conspiracy which includes many judges. In the

fourth paragraph of the letter he states, again in conclusory fashion, that Evans & Dixon acted "in collusion with Judge Gallagher and Judge Mehan" in a case in which Alexander sued AAIM Management Association for breach of contract and slander. Alexander continues:

> Then, Evans & Dixon, in further collusion with Judge Mehan, moved my case up on Judge Mehan's equity docket for an early trial in order to frustrate any possible relief which I might obtain through the appellate process. I then filed a fully documented, seventy-page writ of mandamus with the Missouri Court of Appeals, Eastern District. The clerk stamped the writ as received at approximately 4:30 P.M. Incredibly, on the same day, within a half hour, the appellate judges summarily denied my writ, and a letter of denial was typed and mailed to me before 5:30 P.M. on the same day!! Thus, the appellate judges approved the actions by Evans & Dixon, Judge Saitz, Judge Mummert, Judge Gallagher, and Judge Mehan. I then filed the writ with the Missouri Supreme Court wherein all of my foregoing allegations were fully documented and adequate proof contained in the writ exhibits. The Missouri Supreme Court judges approved the lies and treachery perpetrated by Evans & Dixon as well as the judicial bias on the part of Judges Saitz, Mummert, Gallagher, and Mehan by summarily denying my writ without comment....

In the fifth paragraph of the letter, Alexander states:

> Further evidence of the criminal conspiracy to oppress me with regard to exercising my constitutional rights is clearly seen in the fact that Gerre S. Langton, a partner in the Evans

> & Dixon law firm, is a member of the Missouri State Board of Law Examiners and conspired in the decisions reached by the board....

After motions were filed attacking his original Petition, Alexander filed a First Amended Petition which purported to amplify on the matters set out in the original Petition; the First Amended Petition, however, is largely a rehash of matters included in the letter attached to the original Petition. Nowhere in the Petition or First Amended Petition does Alexander present the "sufficient specificity and factual support to suggest a 'meeting of the minds'" or mutual understanding of the alleged conspirators which the Eighth Circuit demanded in *Smith*, 699 F.2d at 436, and *Deck*, 771 F.2d at 1170. Judge Wright, in dismissing Alexander's complaint and granting summary judgment for the defendants, was upholding the law. Other than by piling unsupported inference on unsupported inference, Alexander does not demonstrate any conspiratorial link between the large law firm of Evans & Dixon and the members of the Thirteenth Circuit Bar Committee and the Board of Law Examiners. While Alexander alleges conspiracy in conclusory fashion, affidavits filed by the defendants eliminate any possible link, let alone a "meeting of the minds" in a conspiracy. According to the affidavit of Richard K. Andrews, Secretary of the Board of Law Examiners (filed January 22, 1990), "Neither Gerre S. Langton nor any partner, agent or personal representative of the lawfirm of Evans & Dixon, had any personal knowledge about or participated in the decision by the Board of Law Examiners to deny Donald K. Alexander's Application for Law Student Registration." The affidavit of Gerre S. Langton (filed January 22, 1990) states: "I had no knowledge that Donald K. Alexander had filed an Application for Law Student Registration with the Board of Law Examiners, nor did I have any knowledge that his

Application had been denied by the Board until ... I received a copy of Richard K. Andrew's ... letter addressed to Mr. Alexander [denying Alexander's application]." The supplemental affidavit of Gerre S. Langton (filed March 5, 1990) adds: "At no time have I had contact with any member of the Thirteenth Judicial Circuit Bar Committee concerning Donald K. Alexander's Application for Law Student Registration. At no time have I instructed any other person to contact any member of the Thirteenth Judicial Circuit Bar Committee to take any action with respect to Donald K. Alexander's Application for Law Student Registration." Finally, any inkling of participation in a conspiracy by the members of the Thirteenth Circuit Bar Committee is conclusively dispelled by the fact, as mentioned above, that the committee recommended approval of Alexander's Application for Law Student Registration.

The Eighth Circuit is not alone in demanding specificity when a plaintiff alleges conspiracy in a 42 U.S C. §1983 case.

The First Circuit Court of Appeals has ruled that mere conclusory allegations are insufficient. *Slotnick v. Staviskey*, 560 F.2d 31, 33-34 (1st Cir. 1977), *cert. denied*, 434 U.S. 1077 (1978). In *Slotnick*, the plaintiff alleged a conspiracy among a state court judge, a credit union, a banking commissioner, and others. *Id.* at 32. The First Circuit upheld the District Court's dismissal of the suit, saying:

> In an effort to control frivolous conspiracy suits under §1983, federal courts have come to insist that the complaint state with specificity the facts that, in the plaintiff's mind, show the existence and scope of the alleged conspiracy. It has long been the law in this and other circuits that complaints cannot survive a motion

> to dismiss if they contain conclusory allegations of conspiracy but do not support their claims with references to material facts.

Id. at 33 (citations omitted).

In another First Circuit case, *Francis-Sobel v. University of Maine*, 597 F.2d 15 (1st Cir. 1979), the plaintiff alleged discrimination and a conspiracy between the Equal Employment Opportunity Commission (EEOC) and the University of Maine. The First Circuit, however, found the pleadings "devoid of any factual allegations that would tend to link" the EEOC and the university. As the Court noted, "Pleading conspiracy under sections 1983 & 1985(3) requires at least minimum factual support of the existence of a conspiracy." *Id.* at 17. The Court upheld dismissal of the complaint. *Id.* at 18.

The Second Circuit ordered the entry of a summary judgment in a 42 U.S.C. §1983 conspiracy case, *San Filippo v. United States Trust Co.*, 737 F.2d 246 (2d Cir. 1984), *cert. denied*, 470 U.S. 1035 (1985), in which the District Court had overruled the defendants' summary judgment motion. The Second Circuit said, "We conclude that plaintiff's failure to allege any material facts to support his conclusory allegation of conspiracy warrants summary dismissal of his complaint...." *Id.* at 248. The Court made clear that "completely unsubstantiated allegations of conspiracy are insufficient to state a valid claim for relief under §1983, or, in the alternative, to defeat defendants' motion for summary judgment." *Id.* at 256. For district court cases following *San Filippo*, see *Green v. City of N.Y. Medical Examiner's Office*, 723 F. Supp. 973, 975 (S.D.N.Y. 1989) (summary judgment, complaint dismissed because of "[n]o evidentiary facts...set forth in the complaint sufficient to support the claim of conspiracy, which on its face is incredible"), and *Katz v. Morgenthau*, 709 F. Supp. 1219, 1231 (S.D.N.Y. 1989) (summary judgment where "[plain-

tiff] blithely charges conspiracy by painting a picture of a personal vendetta of all twenty-three named defendants through conclusory allegations....").

A District Court case in the Third Circuit, *Martin v. Delaware Law School*, 625 F. Supp. 1288, 1292 (D. Del. 1985), involved the plaintiff's claim that a conspiracy was depriving him of the "opportunity to practice law, in violation of 42 U.S.C. §1983." The trial judge said, "Plaintiff's allegations that [Delaware Law School] conspired with the State of Pennsylvania to deprive him of his constitutional rights are ... insufficient to state a claim under Section 1983. ... [S]uch conspiratorial conduct must be pleaded with specificity." *Id.* at 1301 (citations omitted).

The Fifth Circuit likewise holds that when allegations of conspiracy are "wholly conclusory and unsupported," the allegations "cannot withstand a motion for summary judgment." *Henzel v. Gerstein*, 608 F.2d 654, 659 (5th Cir. 1979) (42 U.S.C. §§ 1983 and 1985 action; summary judgments for defendants upheld). ***See also*** the 42 U.S.C. §1983 conspiracy action of *Storey v. United States*, 629 F.2d 1174, 1177 (N.D. Miss., 1986) ("A bare allegation ... is no evidence of conspiracy"; summary judgment for defendants granted).

The Seventh Circuit has this to say about conspiracy charges brought under 42 U.S.C. §1983:

> It is not sufficient to allege that the [private and state] defendants merely acted in concert or with a common goal. There must be allegations that the defendants had directed themselves toward an unconstitutional action by virtue of a mutual understanding. Even were such allegations to be made, they must further be supported by some factual allegations suggesting such a "meeting of the minds."

Tarkowski v. Robert Bartlett Realty, 644 F.2d 1204, 1206 (7th Cir. 1980) (quoting *Sparkman v. McFarline*, 601 F.2d 261, 268 (7th Cir. 1979) (en banc) (concurring opinion of Sprecher, J.). In upholding dismissal of the plaintiff's claim, the Court in *Tarkowski* made clear that "[m]ere conjecture that there has been a conspiracy is not enough to state a claim." *Tarkowski*, 644 F.2d at 1208.

The Ninth Circuit likewise says that "more than vague conclusory allegations are required to state a claim" of conspiracy in a 42 U.S.C. §1983 action. *Mosher v. Saalfield*, 589 F.2d 438, 441 (9th Cir. 1978) (summary judgment upheld). In a later case, *Fonda v. Gray*, 707 F.2d 435 (9th Cir. 1983), the Ninth Circuit affirmed granting summary judgment for the defendants when the plaintiff alleged that banks conspired with the FBI to violate her constitutional rights. Bank employees had allowed the FBI to view the plaintiff's bank records. The Ninth Circuit said: "To prove a conspiracy between private parties and the government under §1983, an agreement or 'meeting of the minds' to violate constitutional rights must be shown. ... While it is not necessary to prove that each participant in the conspiracy knew the exact parameters of the plan, they must at least share the general conspiratorial objective." *Id.* at 438 (citations omitted). The banks, according to the Ninth Circuit, dispelled the inference of improper motives by stating they were ignorant of any plan to harm the defendant. *Id.* For a recent Ninth Circuit case upholding dismissal of a 42 U.S.C. §1983 action alleging conspiracy of a judge with a law firm, see *Schucker v. Rockwood*, 846 F.2d 1202, 1205 (9th Cir. 1988) ("Conclusory allegations ... are insufficient").

Finally, the Tenth Circuit Court of Appeals also demands that "[w]hen a plaintiff in a 42 U.S.C. §1983 action attempts to assert the necessary 'state action' by

implicating state officials or judges in a conspiracy with private defendants, mere conclusory allegations with no supporting factual averments are insufficient; the pleadings must specifically present facts tending to show agreement and concerted action." *Sooner Products Co. v. McBride*, 708 F.2d 510, 512 (10th Cir. 1983).

In short, unsubstantiated, conclusory allegations which amount to nothing more than mere conjecture of conspiracy will not withstand motions for dismissal or summary judgment in at least the First, Second, Fifth, Seventh, Eighth, Ninth, and Tenth Circuits. The conclusory, unsubstantiated conjecture by Alexander would not survive motions for dismissal or summary judgment in any of these circuits. Faced with Alexander's unsubstantiated conspiracy theory, Judge Wright had no choice but to grant summary judgment to the defendants/respondents.

In summary, Alexander simply failed to meet the threshold requirements to avoid summary judgment or dismissal for failure to state a claim. To accept Alexander's argument that any conspiracy charge must necessarily require pretrial discovery and trial is beyond law and reason. Our system of justice does not countenance such pandering to paranoia. The business of the courts and administrative agencies could grind to a halt if every charge of conspiracy necessitated trial. Following Alexander's "logic" still further, if all conspiracy charges necessitate trial and if the trial court's decision is adverse, where does the "conspiracy" end? Could it be that jurors somehow conspired? Perhaps the state was involved in a conspiracy in selecting the jury panel. This conspiracy charge could then be heard by another jury, and so on, *ad infinitum*. If given full reign, the conspiracy theory would never end. But end it must—with the trial judge granting a summary judgment or dismissing a claim when unsub-

stantiated, conjectural and conclusory allegations of conspiracy are made.

Although Alexander's complaint vaguely charges that the Thirteenth Circuit Bar Committee conspired with co-defendants to deprive Alexander of his rights, the case-dispositive fact in favor of the Thirteenth Circuit Bar Committee is that the committee took no action against Alexander but rather recommended approval of Alexander's Application for Law Student Registration. (Affidavit of John Scully filed January 18, 1990, pp. 1-2; Affidavit of John Scully filed February 2, 1990, pp. 1-2; Affidavit of Richard K. Andrews filed February 15, 1990, p. 4, and Exhibit C thereto) Even Alexander admitted this fact. (Alexander Suggestions and Affidavit filed February 21, 1990, p. 6) Thus, the Thirteenth Circuit Bar Committee did not subject Alexander "to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. §1983.

Further, it is difficult to understand how the Thirteenth Circuit Bar Committee could be liable to Alexander in any event because the committee's role in registration of law students is investigatory, and it has no final authority in such matters. Missouri Supreme Court Rule 8.07.

Thus, the District Court properly dismissed Alexander's complaint against the Thirteenth Circuit Bar Committee on the ground that no showing was made that the Committee deprived Alexander of any rights, privileges or immunities.

Point 4: Summary Judgment

Question presented: Whether a plaintiff alleging conspiracy in a 42 U.S.C. §1983 action can overcome summary judgment affidavits specifically denying the

alleged conspiratorial facts with counter-affidavits alleging conspiracy in a conclusory manner.

Alexander addressed the pleading and summary judgment issues in separate points in his Petition for Writ of Certiorari. However, the Thirteenth Circuit Bar Committee submits that the issues are so intertwined that they must be considered together, which has been done in Point 3 above. Accordingly, for its argument under this point, the Committee incorporates Point 3 above.

As noted under Point 3, it should be stressed that Alexander's affidavits in opposition to the summary judgment affidavits filed by the Respondents were conclusory in nature and consisted of little more than reiteration of his grandiose conspiracy theory with no supporting facts.

Point 5: Ripeness

Question presented: Whether Petitioner's 42 U.S.C. §1983 claim was not ripe for determination in that Petitioner failed to exhaust his state remedies.

The members of the Thirteenth Circuit Bar Committee also moved to dismiss Alexander's action on the ground that he had failed to exhaust his remedies.

Specifically, Missouri Supreme Court Rule 8.12 entitles Alexander to a hearing before the Board of Law Examiners and a subsequent appeal to the Missouri Supreme Court. In fact, Alexander still has this hearing and appeal right, and the Missouri Supreme Court has provided an impartial surrogate for the Board of Law Examiners to conduct the hearing. (Suggestions of Board of Law Examiners filed February 15, 1990, pp. 17, 18)

The issue of exhaustion of remedies in the context of the present case may be viewed as one of ripeness, as it was in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). In that case, the plaintiff land developer had not obtained a final decision regarding application of land-use regulations to its property when it filed a 42 U.S.C. §1983 action alleging a taking of property without just compensation. This Court held that because there was no final decision, the claim was not ripe for determination in a §1983 action. Likewise, in the present case, because there has been no final denial of Alexander's Application for Law Student Registration, Alexander's claim is not ripe for determination under 42 U.S.C. §1983.

See also *Feldman v. State Board of Law Examiners*, 438 F.2d 609, 702-03 (8th Cir. 1971) (recommendation of Arkansas Board of Law Examiners to deny plaintiff admission to the bar was not final and did not give rise to §1983 action); and *Chaney v. State Bar of California*, 386 F.2d 962, 966-67 (9th Cir. 1967) (California Committee of Bar Examiner's refusal to certify applicant to California Supreme Court for admission to the bar did not give rise to §1983 action because final decision rested with California Supreme Court). ***Compare*** *West v. Missouri Board of Law Examiners*, 520 F. Supp. 159, 160 (E.D. Mo.), *aff'd*, 676 F.2d 702 (8th Cir. 1981) (plaintiff who received adverse recommendation for admission to bar from Missouri Board of Law Examiners failed to exhaust remedies by not completing appeal to Missouri Supreme Court before filing federal court action; unclear whether case was filed under 42 U.S.C. §1983).

In view of the foregoing, it is clear that District Judge Wright properly dismissed Alexander's claim against the Thirteenth Circuit Bar Committee because his claim is not ripe for determination in that he has failed to pursue the

remedies available to him under Missouri Supreme Court Rule 8.12. Although Alexander attempts to cast his suit as one for damages resulting from the unfavorable recommendation of the Board of Law Examiners, Alexander has not yet sustained any damage because there is no final determination that he will not be permitted to sit for the bar examination in Missouri.

Point 6: Jury Question

Question presented: Whether a jury could reasonably return a verdict in Petitioner's favor based on Petitioner's allegations.

The Thirteenth Circuit Bar Committee addresses this issue at this point only because it was advanced by Alexander. However, the Committee submits that if it is appropriate to consider this question at all, it should only be considered in the context of conspiracy pleading requirements in 42 U.S.C. §1983 cases and the propriety of granting summary judgment—matters which were discussed in Point 3 above and which are incorporated by reference on this point.

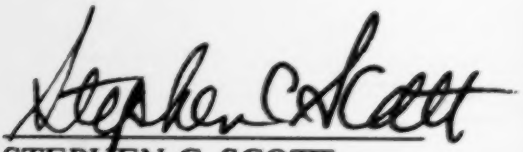
In any event, it is evident that Alexander's conclusory allegations of conspiracy would not even make a case submissible to a jury and that no reasonable jury could find in Alexander's favor in the face of the Respondents' contrary evidence.

It is particularly the case that no reasonable jury could find against the Thirteenth Circuit Bar Committee because, as mentioned above, the Committee *took no action adverse to Alexander but rather recommended approval of his application.*

CONCLUSION

In conclusion, Respondents Loramel P. Shurtleff, Thomas M. Dunlap, Bruce Beckett, Betty K. Wilson and Nancy Galloway, individual members of the Missouri Thirteenth Judicial Circuit Bar Committee, submit that the United States Supreme Court should disallow Petitioner's Petition for Writ of Certiorari on the grounds and for the reasons set out above. As demonstrated above, the Eighth Circuit Court of Appeals did not render a decision in conflict with the decision of another Court of Appeals, nor did it depart from the accepted and usual course of judicial proceedings or sanction such a departure by the District Court. Further, the Court of Appeals decision is not in conflict with applicable decisions of this Court, and this case does not involve important federal law questions which should be settled by this Court.

Respectfully submitted,



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